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By Exchange.

18 July, 1883.

In pursuance of an Order of the House of Peers of the nineteenth day of February 1841, I do appoint WILLIAM BRODIE GURNEY, JOSEPH GURNEY, and THOMAS GURNEY to print and publish the whole proceedings in the House of Peers upon the Indictment against James Thomas Earl of Cardigan for Felony.

SHAFTESBURY.

THE

TRIAL

OF

JAMES THOMAS, EARL OF CARDIGAN

BEFORE

THE RIGHT HONOURABLE THE HOUSE OF PEERS,
IN FULL PARLIAMENT,

FOR

FELONY,

On TUESDAY the 16th Day of FEBRUARY 1841.

Published by Order of the House of Peers.

BOSTON ATHENÆUM

LONDON:
PRINTED FOR
WILLIAM BRODIE GURNEY, JOSEPH GURNEY, AND THOMAS GURNEY.
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1841.

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1883, July 18.
By C. A. Lange.

BOSTON ATHENÆUM
DUPLICATE SOLD.
JUL 18 1883
C. A. Cutter

OCT 1915

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THE TRIAL

OF

JAMES THOMAS EARL OF CARDIGAN.

House of Lords.

Die Martis, 16° Februarii 1841.

THE Lord Denman, in the absence of the Lord Chancellor, entered the House in his robes, preceded by the Serjeant with the mace, Black Rod carrying the Lord High Steward's staff, and Garter with his sceptre, and took his seat on the woolsack as Lord Speaker.

After prayers the roll of peers was called over by the Clerk Assistant, beginning with the junior Baron.

The Clerk of the Crown in Chancery and the Deputy Clerk of the Crown in the Queen's Bench then made three reverences, and the Clerk of the Crown in Chancery, on his knee, delivered the commission to the Lord Speaker, who gave it to the Deputy Clerk of the Crown in the Queen's Bench, who received it on his knee; both the clerks then retired, with like reverences, to the table.

After proclamation made for silence,—

Lord Speaker. Let Her Majesty's commission be read, and let all persons rise and be uncovered while the same is read.

The commission was read by the Deputy Clerk of the Crown in the Queen's Bench, appointing Thomas Lord Denman Lord High Steward.

Then Garter and the Gentleman Usher of the Black Rod, having made their reverences, proceeded to the woolsack, and having taken their places on the right hand of the Lord High Steward, both holding the white staff, presented it on their knees to his Grace.

His Grace then rose, and, having made reverence to the throne, took his seat in the chair of state placed on the upper step but one of the throne, and delivered the staff to the Gentleman Usher of the Black Rod.

Proclamation for silence was made by the Serjeant-at-Arms.

The writ of Certiorari to remove the indictment, with the return thereto, and the record of the indictment, were read by the Deputy Clerk of the Crown in the Queen's Bench, and are as follow:

Writ of Certiorari.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To our justices and judges of our Central Criminal Court, and to every of them, greeting. We, being willing, for certain reasons us thereunto moving, that all and singular the indictments of whatsoever felonies whereof James Thomas Earl of Cardigan is indicted before you (as is said) be determined before us in our parliament, and not elsewhere, do command you and every of you, that you or one of you do send under your seals, or under the seal of one of you, before us in our present parliament, immediately after the receipt of this our writ, all and singular the indictments aforesaid, with all things touching the same, by whatsoever name the said James Thomas Earl of Cardigan is called in the same, together with this writ, that we may cause further to be done thereon what of right and according to the law and custom of England we shall see fit to be done. Witness ourself at Westminster the second day of February in the fourth year of our reign.

EDMUNDS.

Central Criminal Court, to wit. } Be it remembered, That at the general session of Oyer and Terminer of our Lady the Queen, holden for the jurisdiction of the Central Criminal Court, at Justice Hall, in the Old Bailey, in the suburbs of the city of London, on Monday the nineteenth day of October, in the fourth year of the reign of our sovereign Lady Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith; before Sir Chapman Marshall, Knight, mayor of the city of London; Sir John Bernard Bosanquet, Knight, one of the justices of our said Lady the Queen of her Court of Common Pleas; Sir Thomas Erskine, Knight, one other of the justices of our said Lady the Queen of her said Court of Common Pleas; Matthias Prime Lucas, Esquire, Charles Farebrother, Esquire, Thomas Kelly, Esquire, aldermen of the said city; the Honourable Charles Ewan Law, one of the counsel of our said Lady the Queen, learned in the law, recorder of the said city; James Harmer, Esquire, John Lainson, Esquire, James White, Esquire, John Humphery, Esquire, other of the aldermen of the said city; John Mirehouse, Esquire, common serjeant of the said city; William St. Julien Arabin, serjeant at law, one of the judges of the Sheriffs Court of the said city, and others their fellows justices of our said Lady the Queen, assigned by letters patent of our said Lady the Queen, made under the great seal of our said Lady the Queen, of the United Kingdom of Great Britain and Ireland, to the same justices above named, and others, or any two or more of them, directed to inquire more fully the truth, by the oath of good and lawful men of the city of London and county of Middlesex, and those parts of the counties of Essex, Kent, and Surrey which are mentioned and enumerated in an act passed in the fifth year of the reign of our late sovereign lord King William the Fourth, intituled "An Act for establishing a new court

" for the trial of offences committed in the metropolis and parts adjoining," and by other ways, means, and methods by which they shall or may better know (as well within liberties as without) by whom the truth of the matter may be the better known and inquired into, of all treasons, murders, felonies, and misdemeanors, and also the accessaries of them, within the said city of London and county of Middlesex, and the several parts of the counties of Essex, Kent, and Surrey aforesaid, (as well within liberties as without,) by whomsoever and in what manner soever done, committed, or perpetrated, and by whom or to whom, when, how, and after what manner, and of all other articles and circumstances concerning the premises, and every of them or any of them, in any manner whatsoever; and the said treasons and other the premises to hear and determine according to the laws and customs of England, by the oath of William Vowler, George Tierney, Thomas Phipps, Richard Stephen Barnes, William Henry Calvert, Robert Nesbitt, Edward Mitchell Hardy, Henry Edmonds, John Pye, James Marshall, George Phipps, Charles Hood, Edward Marr, Thomas Morel, Charles Prater, William Northcut, Henry Mann, William Frederick Courthope, Watkins William Martin, Charles Gee Load, Richard Lees, John Pearce, and John Thomas Neate, good and lawful men of the jurisdiction aforesaid, qualified according to law, now here sworn and charged to inquire for our said Lady the Queen, for the jurisdiction aforesaid; it is presented in manner and form as appears in and by a certain indictment to this schedule annexed.

JOHN CLARK,
Clerk of the said Court.

Central Criminal Court } THE jurors for our Lady the
to wit. } Queen, upon their oath, present that the Right Honorable James Thomas Brudenell Earl of Cardigan, late of the parish of Wandsworth in the

county of Surrey, on the twelfth day of September in the fourth year of the reign of our sovereign Lady Victoria, with force and arms, at the parish aforesaid, in the county aforesaid, and within the jurisdiction of the Central Criminal Court, with a certain pistol, then and there loaded with gunpowder and a leaden bullet, at and against one Harvey Garnett Phipps Tuckett, then and there being, then and there feloniously and unlawfully did shoot, with intent thereby, then and there feloniously, wilfully, and of his malice aforethought, the said Harvey Garnett Phipps Tuckett to kill and murder, against the form of the statute in that case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

[*Second Count.*]—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said James Thomas Brudenell Earl of Cardigan, on the said twelfth day of September in the fourth year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, and within the jurisdiction of the Central Criminal Court, with a certain pistol, then and there loaded with gunpowder and a leaden bullet, at and against the said Harvey Garnett Phipps Tuckett, then and there being, then and there feloniously, maliciously, and unlawfully did shoot, with intent in so doing thereby then and there the said Harvey Garnett Phipps Tuckett to maim and disable, against the form of the statute in that case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

[*Third Count.*]—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said James Thomas Brudenell Earl of Cardigan, on the said twelfth day of September in the fourth year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, and within the jurisdiction of the Central Criminal Court,

with a certain pistol, then and there loaded with gunpowder and a leaden bullet, at and against the said Harvey Garnett Phipps Tuckett, then and there being, then and there feloniously, maliciously, and unlawfully did shoot, with intent in so doing thereby then and there to do him the said Harvey Garnett Phipps Tuckett some grievous bodily harm, against the form of the statute in that case made and provided, and against the peace of our said Lady the Queen, her crown and dignity.

Proclamation was made by the Serjeant-at-Arms for the Yeoman Usher to bring James Thomas Earl of Cardigan to the bar.

The Earl of Cardigan was brought to the bar by the Yeoman Usher, and on approaching it made three reverences, and knelt till directed by the Lord High Steward to rise; then he made three reverences, one to his Grace the Lord High Steward, and one to the peers on either side, who returned the same; his lordship was then conducted to the stool provided for him within the bar, near to his lordship's counsel.

Lord High Steward. My Lord Cardigan, your lordship stands at the bar charged with the offence of firing with a loaded pistol at Harvey Garnett Phipps Tuckett with intent to murder him; in a second count you are charged with firing with intent to maim and disable him; and in a third count you are charged with firing with intent to do him some grievous bodily harm. Your lordship will now be arraigned on that indictment.

Then the Earl of Cardigan was arraigned by the Deputy Clerk of the Crown in the Queen's Bench in the usual manner.

Deputy Clerk of the Crown. How say you, my lord, are you guilty of the felony with which you stand charged, or not guilty?

Earl of Cardigan. Not guilty, my lords.

Deputy Clerk of the Crown. How will your lordship be tried?

Earl of Cardigan. By my peers.

Deputy Clerk of the Crown. God send your lordship a good deliverance.

Mr. Attorney General and Mr. Waddington appeared as counsel for the prosecution.

Sir William Follett, Mr. Serjeant Wrangham, and Mr. Adolphus appeared as counsel for the Earl of Cardigan.

Proclamation was made for all persons who had been summoned to give evidence to appear and give the same.

His Grace the Lord High Steward, by leave of the Court, removed to the table, preceded by Garter and Black Rod; and his Grace being seated, Black Rod took his seat on a stool at the corner of the table on his Grace's right hand, holding the white staff, Garter on a stool on Black Rod's right, and the Serjeant at the lower end of the table on the same side.

Mr. Waddington. May it please your lordships:—This noble lord, James Thomas Earl of Cardigan, the prisoner at your lordships' bar, stands indicted for feloniously shooting at Harvey Garnett Phipps Tuckett. The indictment charges, in the first count, that his lordship, on the 12th day of September in the fourth year of the reign of our sovereign Lady Victoria, at Wandsworth in the county of Surrey, with a certain pistol loaded with gunpowder and a leaden ball, feloniously and unlawfully shot at Harvey Garnett Phipps Tuckett, with intent to murder him; the second count states the intention to have been to maim and disable him; and the third count states the intention to have been to do him some grievous bodily harm. To this indictment the noble lord has pleaded that he is not guilty, and for his trial has put himself upon your lordships, his peers.

MR. ATTORNEY GENERAL.—My lords, I have the honour to attend you upon this occasion as Attorney General for Her Majesty, to lay before you the circumstances of this case, without any object or wish on my part, except that I may humbly assist your lordships in coming to a right conclusion upon it according to its merits.

My lords, an indictment has been found against a peer of the realm by a grand jury of the country, charging him with a felony, the punishment for which is transportation or imprisonment. My lords, that indictment has been removed before your lordships, at the request of the noble prisoner, most properly made, for an inferior court had no jurisdiction to try it. This charge being upon the face of it so serious it would not have been satisfactory if it had gone off without any inquiry; and the policeman, who was upon this occasion bound over to prosecute, had fulfilled the condition of his recognizance by appearing at the Central Criminal Court and preferring the indictment.

My lords, in the course of this trial it is possible that questions of great magnitude upon the construction of acts of parliament, and respecting the privileges of the peerage, may arise, which it is of great importance to this House, to the Crown, and to the community should be deliberately discussed. My lords, according to all the precedents that can be found, whenever there has been a peer tried in parliament the prosecution has been conducted by the law officers of the Crown. Fortunately, my lords, we have no living memory upon this subject. It is now sixty-four years since any proceeding of this sort has taken place; and I am rejoiced to think, my lords, that the charge against the noble prisoner at the bar does not imply any degree of moral turpitude, and that if he should be found guilty the conviction will reflect no discredit upon the illustrious order to which he

belongs. But, my lords, it seems to me that he clearly has been guilty of a breach of the statute law of the realm, which this and all courts of justice are bound to respect and enforce. Your lordships are not sitting here as a court of honour, or as a branch of the legislature; your lordships are sitting here as a court of justice, bound by the rules of law, and under a sanction as sacred as that of an oath.

My lords, the indictment against the Earl of Cardigan is framed upon an act of parliament which was passed in the first year of the reign of Her present Majesty Queen Victoria; it charges his lordship with having shot at Captain Harvey Tuckett with the several intents that are set forth in the different counts. I think, my lords, that in opening the case to your lordships I shall best discharge my duty by presenting to you a brief history of the enactments of the legislature upon this subject.

By the common law of England, where death did not ensue, no personal violence amounted to more than a misdemeanor, and if the wounded party did not die within a year and a day no felony was committed.

My lords, the first act of parliament that created a felony where death did not ensue was the fifth of Henry the Fourth, cap. 5., whereby certain personal injuries without death were made felonies, but with benefit of clergy. Then, my lords, came the Coventry act, in the twenty-second and twenty-third of Charles the Second, whereby any person lying in wait for, and wounding with intent to maim or disfigure, was guilty of felony, without benefit of clergy. Under both of those statutes no offence was committed unless a wound were inflicted; and it was not until the ninth of George the First, commonly called the Black Act, that an attempt upon life without wounding was made a felony.

My lords, by that act of parliament it was enacted, that

" if any person shall wilfully and maliciously shoot at any " person in any dwelling-house or other place," he shall be guilty of felony, without benefit of clergy, although no wound were inflicted. But, my lords, it was determined upon that statute, (of which, in fairness to the noble prisoner, it is my duty to remind your lordships,) that unless the case was one in which, if death had ensued, it would have amounted to murder, no offence was committed. That was determined in the case of The King v. Gastineaux, which is reported in the first volume of Leach's Crown Law, page 417. In that case the law was thus laid down :— " The offence charged in this indictment is described by the " statute on which it is framed in very few and clear words, " which are, ' that if any person or persons shall wilfully " ' and maliciously shoot at any person in any dwelling " ' house or other place he shall be adjudged guilty of " ' felony, without benefit of clergy.' The word *maliciously* " is made to constitute the very essence of this crime; no act " of shooting, therefore, will amount, under this statute, to a " capital offence, unless it be accompanied with such circum- " stances as in construction of law would have amounted " to the crime of murder if death had ensued from such " act. This proposition most clearly and unavoidably " results from the legal interpretation of the word " *maliciously*, as applied to this subject; for there is no " species of homicide in which malice forms any ingre- " dient but that of murder; and it follows that neither an " accidental shooting, nor a shooting in the transport of " passion, excited by such a degree of provocation as will " reduce homicide to the offence of manslaughter, are " within the meaning of the statute; for from both of " these cases the law excludes every idea of malice."

My lords, the law continued on this footing until an act of parliament was passed in the forty-third year of the reign of King George the Third, which is commonly called

Lord Ellenborough's Act. That did not repeal the Black Act, but considerably extended its provisions; and amongst other enactments it contains this: "That if any person "shall wilfully and maliciously and unlawfully shoot at "any of His Majesty's subjects, with intent in so doing, "or by means thereof, to murder or rob, or to maim, "disfigure, or disable, such His Majesty's subject or sub- "jects, or with intent to do some other grievous bodily "harm to such His Majesty's subject or subjects," he shall be guilty of felony, without benefit of clergy. This act, however, contains an express proviso, "that if it shall "appear, upon the trial of any person or persons indicted "for the wilfully, maliciously, and unlawfully shooting at "any of His Majesty's subjects, that if death had ensued "therefrom it would not have amounted to murder, the "person indicted must be acquitted." Your lordships will observe by this act of parliament it is a capital offence to shoot at, with intent to murder, or with intent to maim, disfigure, or disable, or do some grievous bodily harm, but that it is a case within the statute, only supposing that if death had ensued it would have amounted to the crime of murder.

The next statute upon this subject is the ninth of George the Fourth, cap. 31., which, I believe, is generally called Lord Lansdowne's Act; that noble lord, as Secretary of State for the home department, having introduced it into parliament. It is intituled "An Act to consolidate and amend the statutes relating to offences against the person." It repeals the Black Act, and it repeals Lord Ellenborough's Act, but it contains similar provisions to those of Lord Ellenborough's Act. By the eleventh section it is enacted, that if any person shall unlawfully and maliciously shoot at any person, with intent to murder, he shall suffer death as a felon; and by the twelfth section it is enacted, that if any person unlawfully and maliciously shall shoot at any

person, with intent to maim, disfigure, or disable him, or do some other grievous bodily harm, he shall suffer death as a felon. But then, my lords, this act of parliament contained expressly the same proviso as was inserted in Lord Ellenborough's Act, that if, upon the trial, it shall turn out that if death had ensued the case would not have amounted to murder, the prisoner shall be acquitted. It was still a capital offence to shoot at, with intent to murder, or with intent to maim, disfigure, or do grievous bodily harm, although no wound were inflicted.

My lords, things remained upon this footing until the act passed upon which this indictment is framed. This act received the royal assent on the 17th of July 1837. It is the first of Victoria, chapter 85., intituled "An "Act to amend the laws relating to offences against "the person." The preamble recites, "Whereas it is "expedient to amend so much of an act passed in the "ninth year of the reign of King George the Fourth as "relates to any person who shall unlawfully and mali- "ciously shoot at any person with any of the intents "therein mentioned." It repeals the ninth of George the Fourth, pro tanto; and then, by the second section, it enacts, "that whosoever shall stab, cut, or wound any "person, or shall, by any means whatsoever, cause to any "person any bodily injury dangerous to life, with intent, "in any of the cases aforesaid, to commit murder, shall be "guilty of felony, and, being convicted thereof, shall "suffer death." Therefore, to shoot at, and to give a wound dangerous to life, remains a capital offence; but shooting at, where no wound is inflicted, is no longer a capital offence, and is a felony only, liable to be punished with transportation or imprisonment, whether the intent be to commit murder, or to maim or disable, or do any other grievous bodily harm.

By the third section it is enacted, "that whosoever

" shall shoot at any person, or shall, by drawing a trigger, " or in any other manner, attempt to discharge any " kind of loaded arms at any person, with intent in any " of the cases aforesaid to commit the crime of murder, " shall, although no bodily injury shall be effected, be " guilty of felony, and, being convicted thereof, shall be " liable, at the discretion of the court, to be transported " beyond the seas for the term of his or her natural life, " or for any term not less than fifteen years, or to be " imprisoned for any term not exceeding three years." Then, my lords, by the fourth section it is enacted, " that " whosoever unlawfully and maliciously shall shoot at any " person, or by drawing a trigger attempt to discharge " any kind of loaded arms at any person, with intent to " maim, disfigure, or disable such person, or to do some " other grievous bodily harm to such person, he shall be " guilty of felony, and, being convicted thereof, shall be " liable " to the same punishment provided by the third section of the act of parliament.

My lords, this act contains no such proviso as you find in Lord Ellenborough's Act, or in that of the ninth of George the Fourth, a circumstance which it will be material for your lordships to bear in mind when you come to deliberate upon the second and third counts of this indictment.

My lords, I am happy to say that this indictment contains no count upon the capital charge. A wound was inflicted, but the prosecutor, very properly, has restricted the charge to firing at, with an intent, without alleging that a wound dangerous to life was inflicted. The first count of the indictment charges that the noble lord shot at Captain Tuckett with intent, in the language of the law, to commit the crime of murder; the second count of the indictment charges his lordship with the same act, with intent to maim and disable; the third count charges

him with the same act, with the intent to do some grievous bodily harm. Now, it will be for your lordships to say whether, upon the facts which I shall shortly detail to you, and which I am instructed will be clearly made out in evidence, each and every one of these counts must not be considered as fully established.

My lords, the substance of the evidence is this:—that upon the 12th day of September last the Earl of Cardigan fought a duel with pistols, on Wimbledon Common, with Captain Harvey Tuckett, and wounded him at the second exchange of shots. It will appear before your lordships, that at about five o'clock in the afternoon of that day two carriages were seen to come in opposite directions to the neighbourhood of Wimbledon Common, and a party alighted from each. It was evident to those who observed what was taking place that a duel was in contemplation. The parties came to a part of Wimbledon Common between the road that leads by Earl Spencer's park and a windmill standing upon the top of the common. The seconds first took possession of the ground, and made the usual preparations. The principals, the Earl of Cardigan and Captain Tuckett, were then placed at a distance of about twelve yards from each other; they exchanged shots without effect; they received from their seconds each another pistol; they again fired, and Captain Tuckett was wounded by Lord Cardigan. There came up, almost immediately, Mr. Dann, who occupies the mill to which I have referred, and his son, with Sir James Anderson, a surgeon, who had been standing close by. The wound was examined; it bled copiously; but most fortunately, and I believe no one rejoices in that more than the Earl of Cardigan, it proved not to be of a dangerous nature. The parties were all removed by the miller, who was a constable, and took them into custody. The wound was further examined at his house, and Sir

James Anderson pressed that he might be at liberty to take Captain Tuckett to his house in London; which was immediately acceded to, upon his promising to appear, when he had recovered, before the magistrates.

The miller retained the Earl of Cardigan, and his second, Captain Douglas, in custody. Captain Douglas was the second of the Earl of Cardigan, and Captain Wainwright the second of Captain Tuckett. The Earl of Cardigan had still a pistol in his hand when the miller approached. There were two cases of pistols on the ground, one with the crest of the Earl of Cardigan upon it, which he claimed as being his property. The party were conducted before the magistrates at Wandsworth, and, upon alighting from his carriage, Lord Cardigan made use of these words, "I have fought a duel, and hit my man, I believe not seriously." He then, pointing to Captain Douglas, said, "This gentleman is also a prisoner, and my second." He was asked whether the person that he had hit was Captain Reynolds; upon which he said, "Do you think I would condescend to fight with one of my own officers?" His lordship was compelled by the magistrates to enter into a recognizance to appear when called for, which he did from time to time, till at last the matter was sent to the Central Criminal Court.

My lords, the witnesses that I shall call before you are the miller, his wife and his son, with a policeman of the name of Busain, who was at the station-house, and who will speak to the declarations made by Lord Cardigan, and what then took place. I shall offer no evidence, and I can offer no evidence, before your lordships, respecting the origin of the quarrel. Captain Douglas is to take his trial for this offence; he, as your lordships would observe, is jointly indicted with the Earl of Cardigan. A bill of indictment was also preferred against Captain Tuckett and Captain Wainwright; it was thrown out by the grand

jury; but, as your lordships well know, they are still liable to be tried, and it would not be decorous that I should summon them before your lordships to give evidence which might afterwards be turned against themselves. I shall call before your lordships Sir James Anderson, who has hitherto spoken freely upon the subject, and, I suppose, will make now no objection to state to your lordships all which fell within his observation.

Now, my lords, upon these facts it will be for your lordships to say whether all the counts in the indictment are not fully proved and supported. My lords, with regard to the first, it is painful to use the language which it necessarily employs; but it will be for your lordships to say whether, in point of law, the Earl of Cardigan did not shoot at Captain Tuckett with intent to commit that crime which is there alleged. My lords, I at once acquit the Earl of Cardigan of any thing unfair in the conduct of this duel. Something has been said respecting his lordship's pistols having rifle barrels, and those of Captain Tuckett not having rifle barrels. My lords, however that may have been, I have the most firm conviction that nothing but what was fair and honourable was intended, and that the Earl of Cardigan most probably imagined, when he carried those pistols to the field with him, that one of them would be directed against his own person. Nor do I suppose, my lords, that there was in the mind of Lord Cardigan any grudge against Captain Tuckett,—any personal animosity, any rancour or malignity. Whether his lordship gave or received the invitation, I am willing to believe that his only object was to preserve his reputation, and to maintain his station in society as an officer and a gentleman. His lordship is in the army, he is Lieutenant Colonel of the 11th Hussars; and I have no doubt that he, upon this

occasion, only complied with what he considered necessary according to the usages of society. Under these circumstances, if death had ensued, in the opinion of mankind it would have been regarded rather as a great calamity than as a great crime. But although moralists of high name have excused or even defended the practice of duelling, your lordships must consider what it is by the law of England. My lords, by the law of England there can be no doubt that parties who meet deliberately to fight a duel, if death ensues, are guilty of the crime of murder; and, my lords, it will be my duty to state to your lordships a few of the leading authorities upon that subject. I will mention the highest authorities known to the law of England,—Hale, Hawkins, Foster, and Blackstone.

My lords, in Hale's Pleas of the Crown, the first volume, page 453, it is thus laid down, "If A. and B. "fall suddenly out, and they presently agree to fight in "the field, and run and fetch their weapons, and go into "the field and fight, and A. kills B., this is not murder, "but homicide; for it is but a continuance of a sudden "falling out, and the blood was never cooled; but if "there were deliberation, as that they meet the next "day,—nay, though it were the same day, if there were "such a competent distance of time that in common "presumption they had time of deliberation, then it is "murder."

In the first volume of Hawkins's Pleas of the Crown, chapter 31, section 21, it is thus laid down, "It seems "agreed that wherever two persons in cool blood meet "and fight on a precedent quarrel, and one of them is "killed, the other is guilty of murder, and cannot help "himself by alleging that he was first struck by the "deceased, or that he had often declined to meet him, "and was prevailed upon to do it by his importunity, or

" that it was his only intent to vindicate his reputation, " or that he meant not to kill, but only to disarm " his adversary; for, since he deliberately engaged in " an act highly unlawful, in defiance of the laws, he " must, at his peril, abide the consequences thereof. And " from hence it clearly follows, that if two persons quarrel " over night and appoint to fight the next day, or quarrel " in the morning and agree to fight in the afternoon, or " such a considerable time after, by which, in common in- " tendment, it must be presumed that the blood was cooled, " and then they meet and fight, and one kill the other, he " is guilty of murder. And wherever it appears, from the " whole circumstances of the case, that he who kills another " on a sudden quarrel was master of his temper at the time, " he is guilty of murder; as if, after the quarrel, he fall into " other discourse, and talk calmly thereon; or perhaps, if he " have so much consideration as to say, that the place where- " in the quarrel happens is not convenient for fighting; " or that, if he should fight at present, he should have the " disadvantage by reason of the height of his shoes." That, your lordships may know, refers to Lord Morley's case, where, though your lordships held it was a case of man-slaughter, that circumstance was strongly pressed to show that it was an offence of a deeper dye.

Then, my lords, Sir Michael Foster, in his discourse upon homicide, chapter 5, section 5, says, " Upon this " principle, deliberate duelling, if death ensueth, is, in the " eye of the law, murder, for duels are generally founded in " deep revenge; and though a person should be drawn into " a duel, not upon a motive so criminal, but merely upon " the punctilio of what the swords-men falsely call honour, " that will not excuse; for he that deliberately seeketh " the blood of another upon a private quarrel acteth in " defiance of all laws, human and divine, whatever his " motive may be. But if, as I said before, upon a sudden

" quarrel, the parties fight upon the spot, or if they pre-
" sently fetch their weapons, and go into the field and
" fight, and one of them falleth, it will be but man-
" slaughter, because it may be presumed the blood never
" cooled. It will be otherwise if they appoint to fight
" the next day, or even upon the same day, at such an
" interval as that the passion might have subsided, or if,
" from any circumstances attending the case, it may be
" reasonably concluded that their judgment had actually
" controlled the first transports of passion before they
" engaged. The same rule will hold, if, after a quarrel,
" they fall into other discourse or diversions, and continue
" so engaged a reasonable time for cooling."

Finally, my lords, Blackstone, in the fourth volume of his Commentaries, at page 199, thus writes, when describing and defining the crime of murder:—" This takes in the " case of deliberate duelling, where both parties meet " avowedly with an intent to murder." My lords, he is not here qualifying a case in which he considers it to be murder, but he states that in all cases where parties do so meet it is murder. " This takes in the case of deliberate " duelling, where both parties meet avowedly with an " intent to murder, thinking it their duty as gentlemen, " and claiming it as their right, to wanton with their own " lives and those of their fellow creatures, without any " warrant or authority from any power either divine or " human, but in direct contradiction to the laws both of " God and man, and therefore the law has justly fixed the " crime and punishment of murder on them, and on their " seconds also."

My lords, these are the highest authorities known to the law of England, and these authorities are uniformly followed by the judges of the land. One of the most recent cases is Mirfin's, which occurred within a few years at the Central Criminal Court, and in which the same doctrine

was laid down and acted upon. There is the still more recent case of Sir John Jeffcott, which was tried before Mr. Justice Patteson, a most learned judge, upon the western circuit, and upon that occasion his lordship laid down the same law in the most precise and emphatic terms.

Then, my lords, such being the definition of murder to be found in all our books of authority, and such being the definition of it constantly given from the bench upon the trial of those who have stood upon their deliverance for life or for death, are not your lordships to suppose that the legislature makes use of the term "murder" in the same sense; and that when we find in Lord Ellenborough's Act, in the 9th of George IV., and in this act of the 1st of Victoria, the expression "with intent to "murder," it means with intent to do that which, if accomplished, amounts, in point of law, to the crime of murder? The legislature, when they passed this act, must be taken,—your lordships must be taken—your lordships gave your sanction to this act—you must be taken to have well known what was the legal definition of murder, and to have used that expression in its legal sense. Then, my lords, however painful the consideration may be, does it not necessarily follow that the first count of this indictment is completely proved? The circumstances, my lords, clearly show that the Earl of Cardigan and Captain Tuckett met by appointment. Lord Cardigan (the ground being measured out) twice fires loaded pistols; he takes deliberate aim; he wounds his antagonist. He must be supposed to have intended that which he did. If unfortunately death had ensued, would not this have been a case of murder? My lords, the only supposition by which the case could be reduced to one of manslaughter would be, that Lord Cardigan and Captain Tuckett casually met on Wimbledon Common; that they suddenly quar-

relled; and that while their blood was hot they fought. But your lordships can hardly strain the facts so far as to suppose that this was a casual meeting, when you find that each was supplied with his second, that each had a brace of pistols, and that the whole affair was conducted according to the forms and solemnities observed when a deliberate duel is fought.

Then, my lords, with regard to the second and third counts of the indictment, I know not what defence can possibly be suggested; because, even if there had been this casual meeting, contrary to all probability, and all the circumstances of the case,—if it would only, had death ensued, have amounted to the crime of manslaughter, that would be no defence to the second and third counts of the indictment. My lords, I presume to say so upon the authority of a case which came before the fifteen judges of England, and which was decided; two most learned judges doubting upon the occasion,—not dissenting. The two judges were his Grace the Lord High Steward and Mr. Justice Littledale. It would not become me to say any thing of the opinion I entertain of the learning of his Grace, before your lordships, but of Mr. Justice Littledale I may say there never was a more learned or acute judge. The bar of England have lately taken leave of him with the greatest reluctance and regret. I therefore would ascribe the greatest weight to any doubts even in such a quarter; but, my lords, the other thirteen judges entertained no doubt; and they came to the conclusion that upon the fourth section of this act of parliament it is not necessary for a conviction that if death had ensued the crime should amount to murder. The case to which I refer, my lords, is to be found in the second volume of Moody's Crown Cases, page 40. The case was tried before Mr. Baron Parke, upon the Norfolk Spring Circuit, in the year 1838.

Lord High Steward. What is the name?

Mr. Attorney General. It is entituled, my lord, "Anonymous." The name of the prisoner is not given, but the report seems very authentic. I believe it is in the words of the statement submitted by the learned judges for the opinion of their brethren. The book, my lord, is Moody's Crown Cases Reserved, volume second, page 40; it will be found, I apprehend, expressly in point. "The "opinion of the judges was requested by Mr. Baron "Parke and Mr. Baron Bolland, upon two questions "which arose on the Norfolk Spring Circuit 1838." It is only the first which is material here. The case first recites the 9th of George IV., chapter 31, sections 11. and 12. It then recites the 1st of Victoria, chapter 85, the preamble and the enacting part, and points out the circumstance that the act of Queen Victoria does not contain the same proviso which Lord Ellenborough's Act and Lord Lansdowne's Act do. It then submits this question for the opinion of the judges:—"Is it now a defence to "an indictment for wounding with intent to maim, &c., "that if death had ensued the offence would not have "been murder, but manslaughter?" Your lordships will observe, that shooting at with intent to maim or disable, and stabbing with intent to maim or disable, are in the same category, are subject to the same punishment, and must be attended with all the same rules and incidents. This, therefore, my lords, would have the same authority as if the case submitted to the judges had been, whether, on an indictment for shooting at with intent to disable, it would be a defence to show, that if death had ensued the crime would not have amounted to murder. The arguments are not given, but this is the decision of the Judges:—"At a meeting of the judges, in Easter "Term 1838, they all thought it to be now no defence to "such an indictment, that if death had ensued the offence

" would not have been murder, but manslaughter, except " Lord Denman, Chief Justice, and Littledale, Justice, who " doubted." They did not dissent; they only doubted The other thirteen judges seem clearly to have held that this would not now amount to any defence, and I humbly apprehend that they probably reasoned in this manner: that the intention of the legislature being to mitigate the penal code, and to make offences which before were capital now only punishable with transportation or imprisonment, if there were a shooting or stabbing with intent to maim or disable upon a casual scuffle, in heat of blood, without premeditation; still it is meant to be an offence within this section of the act of parliament, which gives a discretionary power to the court before whom the offender is tried either to transport for fifteen years or to imprison for a single hour. Therefore those learned judges, seeing the discretion that was given with regard to punishment, seeing the omission of the proviso, and seeing that it was no longer a capital offence, came to the decision that the offence was committed, though, if death had ensued, the crime would not have amounted to murder. Now, my lords, looking to the authority of that case, I know not what defence can possibly be attempted with regard to the counts of the indictment charging the intent to maim and disable and do grievous bodily harm. The noble earl must be supposed to have intended what, upon a second attempt, he actually accomplished.

My lords, I rejoice to consider that the noble prisoner will have an advantage that has not been enjoyed by any individual who has hitherto been tried at your lordships bar; an advantage which was not enjoyed by Lord Lovat, or Lord Byron, or Lord Ferrers, or the Duchess of Kingston; he will have the advantage of my most able and ingenious and honourable friend Sir William Follett ad-

dressing your lordships in his behalf upon the facts and merits of the case. This arises, my lords, from that most admirable law which your lordships passed a few years ago, by which in all cases of felony the party accused has the advantage of an address by counsel to the tribunal who are to determine upon his guilt or his innocence. But, my lords, notwithstanding the learning, the ability, and the zeal of my honourable and learned friend Sir William Follett, I know not how he can at all persuade your lordships to acquit upon any one count of the indictment. He will not ask your lordships, and he would ask you in vain if he did, to forget the law by which you are bound. My lords, Captain Douglas stands upon his trial before an inferior tribunal; that trial has been postponed by the judges upon the express ground that this case should first be tried by the highest criminal court known in the empire. You, my lords, are to lay down the law by which all inferior courts are to be governed.

My lords, I would beg leave upon this subject to read the words made use of at this bar by one of the most distinguished of my predecessors, who afterwards, for many years, presided with great dignity upon the woolsack in your lordships house; I mean Lord Thurlow. When Attorney General, addressing your lordships in the case of the Duchess of Kingston, he makes use of these expressions:—"I do desire to press this upon your lordships as "an universal maxim: no more dangerous idea can creep "into the mind of a judge than the imagination that he is "wiser than the law. I confine this to no judge, what-"ever be his denomination, but extend it to all; and "speaking at the bar of an English court of justice, "I make sure of your lordships approbation when I "comprise even your lordships sitting in Westminster "Hall. It is a grievous example to other judges. If your "lordships assume this sitting in judgment, why not the

" King's Bench? Why not commissioners of oyer and " terminer? If they do so, why not the Quarter Ses- " sions? Ingenious men may strain the law very far; " but to pervert it, to new model it—the genius of our " constitution says judges have no such authority, nor " shall presume to exercise it."

My lords, I conclude with respectfully expressing my conviction that, at the conclusion of this trial, your lordships judgment, whatever it may be, will be according to the law and justice of the case, and that your lordships will preserve that high reputation in the exercise of your judicial functions which has been so long enjoyed by your lordships and your ancestors.

The Attorney General apologized for the absence of the Solicitor General, which he stated was occasioned by severe indisposition.

Evidence for the Prosecution.

THOMAS HUNT DANN sworn by the Deputy Clerk of Arraigns in Queen's Bench.

Examined by Mr. Waddington.

Q. Are you a miller, living at Wimbledon?

A. Yes.

Q. Is your mill close to Wimbledon Common?

A. It is on the common.

Q. Are you a constable for the parish of Wimbledon?

A. Yes.

Q. Were you at your mill on the afternoon of Saturday the 12th of September?

A. Yes.

Q. Do you remember, about five o'clock on that afternoon, observing a carriage driving towards the common?

Sir William Follett. Pray do not lead him.

Mr. Waddington. Did you observe any thing about five o'clock in the afternoon of that day?

A. Yes.

Q. State what it was?

A. I saw a carriage drive up opposite Mr. James Currie's, and there stop?

Q. Where did that carriage drive to?

A. It stopped there.

Q. Upon the common, or upon the road adjoining the common?

A. It was on the common.

Q. Was it on the edge of the common that it stopped?

A. Yes.

Q. Was that the only carriage you saw?

A. No.

Q. Tell us what other carriage you saw?

A. I saw one by the pales of Earl Spencer's, along the road that leads from Wandsworth to Wimbledon.

Q. Was it moving, or had it stopped?

A. I saw it stopping.

Q. Did you see any one get out of either of those carriages?

A. I am not certain that I did.

Q. Did you see any persons on the common shortly after you saw the carriages?

A. I saw two persons coming from the first carriage, and two from the second.

Q. What did you see them do?

A. I saw one go into Wimbledon parish and one into Wandsworth, and from the other carriage they divided also, one into Putney and the other into Wandsworth parish.

Q. Is part of the common in Wandsworth parish and part in Wimbledon parish?

A. Yes; and part in Putney.

Q. One of the gentlemen went to the part of the common in Wimbledon parish, and another to that in Wandsworth, and another to that in Putney?

A. Yes.

Q. Look at his lordship at the bar, and say if that was one of the gentlemen?

A. It is.

Q. Did you see any thing more done at that time?

A. At that time I suspected it was a duel.

Q. Do not tell us what you suspected; did you see any thing more at that time?

A. No.

Q. Did you give any directions to your wife? Do not tell us what they were.

A. I did.

Q. What did you then do?

A. When I was called by my wife——

Q. You went to another part of your mill, did you, after giving those directions to your wife?

A. Yes,

Q. Were you afterwards called by your wife?

A. I was.

Q. What did you then do?

A. I went in doors, and got my staff, and then came to the gate.

Q. You went into your house, and got your constable's staff, and came to your gate?

A. Yes.

Q. What did you do when you came to the gate?

A. I saw two gentlemen, standing about twelve yards apart, presenting pistols at each other, and at that moment they fired at each other.

Q. Did they fire at the moment you arrived at your gate?

A. Near about that.

Q. Was his lordship one of those gentlemen?

A. Yes.

Q. Did you hear the reports of two pistols?

A. I did.

Q. Did you see any other gentlemen at the same time?

A. I saw one prior to that standing under Mr. Currie's hedge?

Q. I ask you, at the time the pistols went off did you see any other gentlemen?

A. There were four.

Q. Did you see the other two at that time?

A. I did; standing on the right hand.

Q. Were they standing together?

A. Nearly so; not far apart.

Q. On the right hand of the gentlemen who fired?

A. Yes.

Q. Had Lord Cardigan his face to you, or his back to you?

A. His face to me.

Q. Where was the other gentleman who fired, standing?

A. Standing nearer to me, with his back partly to me.

Q. And Lord Cardigan opposite to him, with his face to you?

A. Yes.

Q. Now state what took place after the two shots were fired?

A. I then made the best of my way to the ground, and the second shot took place when I was about fifteen yards on the left.

Q. Fifteen yards from the gentlemen who fired, do you mean?

A. Yes.

Q. How far was the gate of your house from the spot where the gentlemen stood when they fired?

A. Two hundred and twenty yards.

Q. As you were running up from your gate towards the gentlemen, did you see what was done before the second shot was fired?

A. I saw them in the act of getting fresh pistols.

Q. Tell me how that was done?

A. I cannot exactly say; what with running I do not know exactly; but they had fresh ones.

Q. Did you see who gave them the fresh pistols?

A. Those two gentlemen that acted as seconds.

Q. Were those the gentlemen that you have described as standing on the right?

A. Yes.

Q. Did you observe whether Lord Cardigan moved from his place or not between the firing of the first and second shots?

A. Yes; he advanced forwards, and then drew back again.

Q. Do you mean that he went towards the gentleman that was opposite to him, or towards the seconds?

A. Towards the seconds?

Q. He drew back to the place he first occupied?

A. Yes.

Q. You tell us you saw the pistols fired a second time; did you observe whether either of the shots took effect?

A. I thought that Captain Tuckett was wounded,—or at least the other gentleman; I did not know who it was.

Q. You thought that the gentleman that you afterwards ascertained to be Captain Tuckett was wounded?

A. Yes.

Q. Did you see what that gentleman did with his pistol after the second shots were fired?

A. No.

Q. You did not see whether he held it in his hand, or what he did with it?

A. Which are you alluding to?

Q. I am speaking of Captain Tuckett.

Sir William Follett. He says he did not know who he was.

Mr. Waddington. Did you see whether the other gentleman did any thing with his pistol when the second shots were fired?

A. I took one pistol from Lord Cardigan's hand,—at least from one gentleman.

Q. Did you see whether the other gentleman who fired, not Lord Cardigan, did any thing with his pistol after the second shot was fired?

A. No; I cannot say what became of it; I did not see.

Q. Did you then go up to the gentlemen?

A. I did.

Q. What did you do when you got up to them

A. I went up to the gentleman that was farthest from

me, whose face was towards me, and put my hand on his shoulder, and told him that for a breach of the peace he must consider himself in my custody, in the name of her Majesty, our Sovereign Lady, the Queen.

Q. Was that his lordship?

A. It was.

Q. Had his lordship a pistol in his hand at that time?

A. He had.

Q. What became of it?

A. I took it from his hand.

Q. Did you keep it in your possession?

A. I was requested then to allow them all to be packed up in their cases; the four pistols. They were done so, and I then took possession of the two cases.

Q. By whom were you requested?

A. I cannot say which gentleman.

Q. By one of the gentlemen?

A. Yes.

Q. That was done, and you took possession of the cases and pistols?

A. Yes.

Q. How many pistols were there?

A. Four.

Q. You put two in each case?

A. Yes.

Q. And then took possession of the whole?

A. Yes.

Q. Did a fifth gentleman come up?

A. There was a fifth gentleman at the time that I got up, or near about the time. After I had addressed Lord Cardigan in the way I did, I looked round, and I then saw five.

Q. What did the fifth gentleman do?

A. Attended the gentleman that was wounded.

Q. Did you see yourself whether the other gentleman was wounded or not?

A. I did not.

Q. After you had laid your hand on Lord Cardigan's shoulder, and said to him what you have told us, what was done next?

A. I turned round to the others, and stated to the same effect to them.

Q. What was done then?

A. I believe the doctor wished me to allow him to take the wounded gentleman to my house.

Q. Did he say so in the presence of Lord Cardigan?

A. In the presence of all that were there.

Sir William Follett. He said so, did he?

A. Yes.

Lord Wynford. Do you know, or did you know, that gentleman to be a medical man?

A. I did not then, my lord.

Mr. Waddington. You had never seen any of them before?

A. No, I had not.

Q. Was he examining the gentleman whom you supposed to have been wounded?

A. Not in my presence; at least I did not see him. I was then turned round with his lordship.

Q. Did you all go to your house?

A. Yes.

Q. All the five gentlemen and yourself?

A. All went into my yard,—not into the house.

Q. Tell me what took place after the five gentlemen got into your yard?

A. We waited till the wounded gentleman retired to my room.

Q. Did you see the wounded gentleman retire into a room in your house?

A. I saw him go into the room, and I saw him come out.

Q. Did he go into the room by himself or did any one go with him?

A. No; one gentleman went with him.

Q. Was that the gentleman whom you suppose to be the doctor?

A. Yes.

Q. Did you see your wife take any thing into the room where they were?

A. I did not.

Q. Did they presently come out of the room?

A. Yes.

Q. What was done then?

A. One gentleman asked me to allow the wounded gentleman to return to his own home, and I gave consent by their giving me a card of their address.

Q. That is, the gentleman that wanted to go home?

A. Yes.

Q. The wounded gentleman gave you a card of his address?

A. I have a card of his, but whether he gave it me or another gentleman I am not certain.

Q. Have you got it here?

A. I have.

Q. Produce it?

Sir William Follett. We cannot have that card in evidence unless it came from Lord Cardigan; it cannot be made evidence against him unless that be shown.

Mr. Waddington. Was Lord Cardigan present when this card was given?

A. In the yard.

Lord Wynford. Was he near enough to see what was done?

A. Yes.

Q. And to hear what passed between you and the other gentlemen?

A. I should think so; I cannot say exactly.

Sir William Follett. Will you ask him whether the card was given to him in the house or in the yard?

Mr. Waddington. Was the card given to you in the house or in the yard?

A. In the yard.

Q. I think you said you thought it was not Captain Tuckett that gave it you, but another gentleman. How was that?

A. I am not certain which gave it me.

Q. What do you mean by "which"?

A. "Which" of the two gentlemen that wished to go away.

Q. Were they together when it was given to you?

A. Yes.

Lord Wynford. Lord Cardigan was not one of the two that wished to go away, was he?

A. No.

Mr. Waddington. Were the two that wished to go away, the wounded gentleman and another of the party?

A. Yes.

Q. And upon your telling them that they might go upon giving you their card, one of them gave you the card you now produce?

A. Yes.

Sir William Follett. Do not read that card yet.

Mr. Waddington. I propose to read it. Do you make any objection to it?

Sir William Follett. Certainly.

Mr. Waddington. I now propose, my lords, to read this card.

Sir William Follett. The counsel for the prosecution in this case are proposing to read a card, for the purpose, I presume, of proving who one of the parties was upon this occasion.

Lord High Steward. Do you object to its being read?

Sir William Follett. I object to any thing of the kind, my lord.

Lord High Steward. Mr. Attorney General, do you think it material to tender that evidence at present?

Mr. Attorney General. We will waive it for the present.

Mr. Waddington. Did the other gentleman that wanted to go away write something in pencil upon the back of the card?

A. Yes.

Q. Upon receiving this card did you allow them to go?

A. Yes.

Q. In consequence of receiving this card, did you afterwards call at a particular house?

Sir William Follett. I wish you would not lead him so much. You ask him whether in consequence of a certain thing he went to a certain place.

Mr. Waddington. I apprehend it is a strictly correct question. Do you object to the question?

Sir William Follett. I certainly object to its form. Alter the form of it.

Mr. Waddington. Then I will not ask that at present. Did you afterwards go to a house in Hamilton Place?

A. I did.

Q. On what day was that?

A. If you will allow me to refer, I can state the day of the month.

Q. What do you wish to refer to?

A. I have made a memorandum of it.

Sir William Follett. When did you make it?

A. At the time.

Mr. Waddington. Take it out.

[*The Witness referred to the memorandum.*]

A. On the 18th of September I went to Hamilton Place.

Q. What number?

A. 13.

Q. Whom did you ask to see?

A. Captain Harvey Tuckett.

Q. Whom did you see?

A. I saw Captain Harvey Tuckett.

Q. Did you speak to him?

A. I did.

Sir William Follett. I wish you would put your questions differently.

Mr. Attorney General. We ask him whom he saw?

Sir William Follett. He does not know Captain Harvey Tuckett I suppose.

Mr. Waddington. He asked for Captain Harvey Tuckett, and he saw this gentleman.

Mr. Attorney General. It is quite regular.

Mr. Waddington. Did you speak to him?

A. did.

Q. Did you call him by that name?

A. I do not know that I addressed him by any name.

Q. Had you seen that gentleman before?

A. I had.

Q. Where?

A. On Wimbledon Common.

Q. What was he doing there?

A. Fighting a duel.

Q. Was that the gentleman that you have described as the gentleman who stood opposite to Lord Cardigan?

A. Yes.

Q. How many gentlemen went away upon your receiving this card?

A. There were three went; two with my permission, and one went without.

Q. Did Lord Cardigan remain?

A. He did.

Q. Where did you take him?

A. To the station-house at Wandsworth.

Q. How soon after?

A. Directly afterwards.

Q. What did you do with the pistols after they had been put into the cases?

A. Took them to Wandsworth.

Q. Where did you take them to at Wandsworth?

A. To the station-house.

Q. Did you give them to any one?

A. To the inspector.

Q. What was his name?

A. Busain.

Q. Was any thing said by Lord Cardigan respecting the pistols in your presence?

A. Lord Cardigan owned one case.

Q. Will you state what he said, that you recollect?

A. I do not recollect that he said any thing particular, more than "This is mine," or something similar to that. I am not certain of the words.

Q. Did you observe any thing upon that case?

A. A crest.

Q. Did you ever see the fifth gentleman afterwards, whom you have called "the doctor"?

A. Yes.

Q. Where was that?

A. At the office at Wandsworth.

Q. Do you mean the station-house or the magistrates house?

A. I mean the magistrates house.

Q. On what day was that?

A. On the 14th.

Q. What was going on at the office upon the 14th?

A. The examination.

Q. Of whom?

A. Of Lord Cardigan.

Q. Did you afterwards see him anywhere else?

A. I have seen him at his own house.

Q. Where was that?

A. I entirely forget the number and the street, but it is very handy to Piccadilly.

Q. Was his name on the door?

A. I think it was.

Q. What was the name on the door of the house where you saw him?

A. "Sir James E. Anderson."

Cross-examined by Sir William Follett.

Q. Will you give me those memorandums of yours? (*The same were handed to Sir William Follett.*) When did you write these?

A. Every day as they occurred.

Q. Beginning with September the 12th?

A. Yes.

Q. Who desired you to do so?

A. On my own part, for my expenses.

Q, Were you desired by any one to do it?

A. No, I was not.

Lord Wynford. Did you write them upon that paper at first, or upon some other paper?

A. I believe I copied them from another paper.

Sir William Follett. When did you copy them?

A. Some time since; I cannot say exactly.

Q. What is the meaning of these sums; does this "20" mean 20*s.*?

A. No; it means miles.

Q. So many miles that you went?

A. Yes.

Q. You seem to have gone about a good deal upon this business; who ordered you to do it?

A. The magistrates.

Q. What magistrates?

A. At Wandsworth.

Q. What are their names?

A. Mr. Nottidge the chairman, Mr. Bainbridge, Mr. Wilson, and Captain Page.

Q. Who gave you the order to go to the house in Hamilton Place?

A. The first order was from the policeman and from the inspector, and I understood that came from the magistrates.

Q. Then you received no order from the magistrates to go there?

A. A note from the inspector first.

Q. Did you go there more than once?

A. I went three times.

Q. All by the same order?

A. No; once was by Captain Page's order, I think.

Q. What had the magistrates to do with it; what had they to do with sending you about in this manner?

A. Their first object in sending me was to inquire as to the state of Captain Tuckett's health.

Q. By whom were you sent to Mr. Wainwright, and to these various places; who ordered you to go; was it the magistrates?

A. Yes.

Q. Were the magistrates taking up this prosecution, or what made them send you about?

A. I do not know.

Q. Were they not the magistrates, the judges, before whom the complaint had been lodged originally?

A. Yes.

Q. They were the persons that sent you to these different places to make inquiries and so on?

A. Yes.

Q. Did they send you to the Old Bailey also?

A. I had a bond to take me there, and I was also informed by the inspector when I was to go.

Q. You were examined as a witness before the grand jury?

A. Yes.

Q. Were you also examined before the grand jury upon the bill against the other parties?

A. Yes.

Q. The bill that was thrown out?

A. Yes.

Q. The same witnesses were examined upon both, were they not?

A. Yes.

Q. And you gave the same evidence upon both?

A. Yes.

Q. One bill was thrown out, and the other found?

A. Yes.

Q. Now will you have the goodness to go back to the statement you made first. You say you saw certain persons coming from the carriages?

A. Yes.

Q. The persons you saw coming from the carriages, did you see them about the place where you afterwards saw the firing?

A. Yes.

Q. The same place?

A. Yes.

Q. You stated that when you saw them coming from the carriages to the place you then recognized one of them to be the noble lord who is now sitting there?

A. Yes.

Q. What is the distance from your mill where you were standing to that place?

A. Two hundred and twenty yards.

Q. Do you mean to state upon your oath before their lordships, that at the distance of two hundred and twenty yards, you were able to recognize any of the parties?

A. No; but then I did not lose sight of them.

Q. But your oath was, that at that time you knew him to be Lord Cardigan. Is that true or not?

A. No, I have never gone to say that; it is a mistake. I never intended to say that I knew him or any one else at that distance.

Q. Could you know any of the parties, at the distance they were from your house, so as to be able to speak to them again?

A. No.

Q. Therefore, when you first saw the parties, you were not able to distinguish their features or their persons?

A. No.

Q. Then you went to your gate afterwards, and you say, that when you saw the firing you were standing at your garden gate?

A. No, I was coming out at the gate.

Q. That is about the same distance?

A. It is two hundred and twenty yards.

Q. Then at the time the shot was fired, which you saw coming out of your garden gate, could you have recognized at all the persons?

A. No.

Q. You say you went towards them?

A. I did.

Q. When were you first able at all to distinguish the persons?

A. I did not lose sight of them.

Q. I am not asking whether you lost sight of them; I ask when you were first able to distinguish the persons?

A. The next time I saw them I recollected them again.

Q. When, upon this occasion, were you first able to

discover who the persons were, or to know them; was it after the second shot was fired?

A. After the second shot.

Q. Then, at the time the second shot took place, you were not able to recognize or know who the persons were that were firing?

A. No; but after that I should know them again.

Q. How could you know them again, if you were not able to see their persons at that time?

A. I did see them.

Q. Did you see them so as to know them before the second shot was fired?

A. No, not before the second shot was fired.

Q. Then when did you first see them so as to know the noble earl who is sitting there; what was he doing when you were able to see his person so as to recognize him?

A. He was standing at the very spot.

Q. That was when you came up?

A. Yes.

Q. Where were all the other gentlemen at that time?

A. Close by.

Q. What were they doing?

A. I cannot exactly say what they were doing for a few minutes, because my attention was directed entirely to his lordship.

Q. You do not know what the others were doing?

A. Not for a second or so. When I turned round I saw the other four standing.

Q. Were you at all able to tell which of the other parties it was that fired the shot?

A. I am certain as to who was the party, because I never lost sight of them till I got up to them,

Q. How does that make you certain as to who fired the shot?

A. I saw the pistol in his hand.

Q. In whose hand?

A. In Captain Tuckett's hand.

Q. He had a pistol in his hand when you came up?

A. He had.

Q. You do not know what was done with it?

A. No.

Q. How soon after that might you have seen the other gentleman that you said was a doctor?

A. When I turned round from Lord Cardigan, I then perceived that there were four.

Q. How soon after that did you see another?

A. I did not see any more after the time when I turned from his lordship.

Q. You mean four besides Lord Cardigan?

A. Yes.

Q. When the fifth came up you do not know?

A. No.

Q. Did you recognize his person so as to be able to know him again?

A. Yes.

Q. And he went into your house also with the other parties?

A. Yes.

Q. One question only as to these different places you have been to, and your charges; have you been paid for them?

A. I have not.

Q. Did you go to the Home Office at any time?

A. I did.

Q. At what time was it?

A. It was a week ago Saturday last.

Q. What did you go there for?

A. I was requested to go there; and then I was asked questions as to my evidence.

Q. At the Home Office?

A. Yes.

Q. Who asked you questions as to your evidence at the Home Office?

A. A gentleman of the name of Vizard.

Q. Was your examination taken down in writing at that time?

A. The gentleman was writing, but whether he was writing what I said, or what he was writing, I know not.

Q. You had not been at the Home Office before?

A. No.

Q. And that was the only examination that has been taken for the purpose of this trial?

A. I cannot say.

Q. But that is the only examination of you for the purpose of this trial?

A. Yes.

Q. You had not been examined since the time you were at the Old Bailey till you went to the Home Office?

A. No.

Q. Were there any other witnesses there?

A. Yes.

Q. Who?

A. My wife and my son, and Mr. Busain and Mr. Bicknell.

Q. All examined at the Home Office?

A. All went in before the gentleman, but what occurred with them I know not. I only answer for myself.

Q. Have you presented this bill to any one for payment?

A. I applied to the magistrates for my expenses, and they gave me a certificate.

Q. Have you received the money?

A. No.

Q. I understood you to say that you never lost sight of these gentlemen from the time you first saw them?

A. No, I have not said that. I did not lose sight of them

after I came to the gate; prior to that I did lose sight of them.

Q. Did not you tell me, when I asked you whether you had recognized them in coming from the carriages, that you had never lost sight of them?

A. If you understood me that way it was wrong.

Q. You said so; but it was a mistake, was it?

A. Yes.

Q. Then you did lose sight of them?

A. Yes, after I first saw them come on the ground.

Q. For how long?

A. A few minutes.

Q. Where were you at that time?

A. I was on the stage when I first saw them; the stage of the mill is about twenty feet high, and then I had to come down the stairs, and then I lost sight of them; and then I got into my house, and then I lost sight of them again.

Q. How long were you in the house?

A. No more than just necessary to catch hold of the constable's staff, and then return.

Q. Why did not you go towards the gentlemen at once if you suspected they were going to fight a duel?

A. I did not like to go without my authority.

Q. You thought it better to let the duel be fought first, and then go and take them up?

A. No, I did not think that.

Q. What was the meaning of your answer when you said you desired your wife to call you?

A. I left my wife to watch, and to let me know when there was sufficient that she could suppose it was a duel. I had suspicions it was a duel to take place

Q. As soon as she saw that there was going to be a duel she was to let you know?

A. Yes.

Q. And then you were to go two hundred and twenty yards for the purpose of preventing it?

A. Yes.

Q. And when you got up you found that the gentlemen had exchanged two shots?

A. Yes.

Q. Who had instructed you to stop duels upon Wimbledon Common?

A. I believe the first onset of it was in the case of Mirfin; the coroner recommended that I should be appointed.

Q. Who was the coroner?

A. Mr. Carter.

Q. And you got a constable's authority?

A. Yes.

Q. And this is the first job you have made of it?

A. No; I have stopped several.

Q. Have you been paid for them?

A. No.

Lord Wynford. Why did not you call out to the gentlemen when you supposed that they were going to fight a duel?

A. I do not know my reason. I ran to them as fast as I could run.

Sir William Follett. You changed your coat, did not you?

A. No.

Q. You put on your coat, did not you?

A. No.

Q. Did you stop the mill?

A. No.

Re-examined by Mr. Waddington.

Q. Did you state what was the number of the house in Hamilton Place where you saw the gentleman that you call Captain Tuckett?

A. 13.

Q. How often did you see him there?

A. Three times.

Q. Upon three different days?

A. Yes.

Q. Did you ask for him upon each occasion?

A. Yes.

Q. You have been asked as to losing sight of the gentlemen; did you ever lose sight of the gentlemen that fired the first shots from the time of your leaving the gate till you got up to them?

A. No.

Q. Can you undertake to state positively whether the gentlemen who fired the second shots were the same as fired the first?

A. I am positive of that.

Q. When you got up you said that Captain Tuckett had a pistol in his hand; had Lord Cardigan also a pistol in his hand?

A. Yes.

Earl of Radnor. Each time that you went to Hamilton Place did you ask for Captain Tuckett?

A. Yes.

Q. Were you each time shown to the same gentleman?

A. Yes.

Q. Did you see any other gentleman there?

A. Yes.

Q. In the same room with Captain Tuckett?

A. Yes.

Q. Did you address him by the name of Captain Tuckett?

A. I do not know that I did.

Q. Did any thing pass which enables you to say that that was Captain Tuckett, and not the other gentleman?

A. Yes; he wrote a note for me to take to the magistrates, and signed his name.

Q. He signed his name "Tuckett," did he?

A. Yes.

Sir William Follett. I apprehend that would be hardly evidence.

Earl of Radnor. Was the other gentleman one of the gentlemen that you saw at Wimbledon Common?

A. No.

Q. It was a different gentleman?

A. Yes.

Q. Did you see that other gentleman every time that you were shown up to Captain Tuckett?

A. I do not think I saw him the last time, and I am not certain that I saw him but once.

Q. You are sure that you did not see him every time?

A. No.

Q. In each case you asked for Captain Tuckett, and were shown directly to this same gentleman?

A. Yes.

Lord Audley. You say that at the first discharge you heard two pistols. Did you hear one or two reports?

A. I heard two reports.

Q. Did you see the flash and smoke from either?

A. I cannot say that, but I heard two reports, but very close together.

Q. You did not see the flash and smoke?

A. I might; I am not certain as to that.

Mr. Attorney General. My lords, it is not a matter of essential importance, but I now propose, with your lordships permission, that this card should be given in evidence. It is a card that was delivered to the witness in the presence of the noble earl, and I apprehend on that ground, and likewise that it is part of the res gestæ, that it is clearly admissible upon this occasion.

Sir William Follett. My lords, I shall take your lordships

opinion, whether the counsel for the prosecution have any right to read this card. Your lordships will observe the evidence relating to it. It is not that it was given by Lord Cardigan, or that it was given with Lord Cardigan's knowledge. It is perfectly clear, indeed, upon the statement, that Lord Cardigan did not see the card; that he did not see what was written upon it; and there is no evidence even to show that he was aware of that card being given. The object of this evidence of course is to prove who the person was that gave that card.

Now, my learned friend the Attorney General says, it is part of the res gestæ. But it is obvious that a person might give a card, or an address, or direction, not for the purpose of giving his real name, but for the purpose of giving another; and unless it was done with the knowledge, and the full knowledge, of the prisoner at the bar, I think your lordships will say that it is not evidence against him. It appears here that he was no party to the giving of the card; he was not aware of the contents of the card; he knew nothing about it; he never saw it; and therefore I take the liberty of submitting to your lordships, that that card cannot be read in evidence against the noble earl at this time. Whether they will have any other evidence for the purpose of proving who this gentleman was, or for the purpose of connecting this card with the noble earl, is another question; but, at present, I humbly submit to your lordships, that there is no evidence to connect it with him, and that it ought not to be read at all in evidence against him.

Lord High Steward. Mr. Attorney General, you think it important to press this evidence, do you?

Lord Wynford. The witness does not know whether the Earl of Cardigan saw it.

Sir William Follett. Nor does he know which of the parties gave it.

Mr. Attorney General. It stands that he cannot tell whether it was the wounded gentleman, or the gentleman that accompanied him, that gave the card; but it was given either by the one or by the other; it was given in the yard; it was given in the presence of the Earl of Cardigan. Now, I will not state what this card is at present; but suppose it to contain the address of Captain Tuckett, and that it was 13, Hamilton Place, and that thereupon the witness goes to 13, Hamilton Place, and sees the wounded gentleman, would not that be admissible evidence upon this trial? It would be entirely for your lordships to say what weight is to be given to the evidence. The only question now is whether it be admissible. Now, this being given in the presence of the Earl of Cardigan, and then the witness going to the place mentioned in this card, ought not that card to be admitted in evidence *valeat quantum?*

Lord High Steward. Do you mean to contend that because the card is given in the presence of the prisoner, that makes the contents of it evidence, without some proof that he saw it?

Mr. Attorney General. I would by no means contend that a written document given in the presence of the prisoner would render the contents of that written document evidence against the prisoner; far from it. But this card is to be considered merely as the address of the person who wishes to retire.

Sir William Follett. You are stating the contents by way of making it evidence.

Mr. Attorney General. I am not stating the contents; I am cautiously abstaining from it. But when a person wishes to have leave to go to his home, and gives a card such as this, it must be presumed to be merely his address, stating his name and place of abode; and I should humbly submit to your lordships, that this would be admissible

evidence, not only on the ground of its being in the presence of the noble prisoner, but I will suppose that he had not been present; I will suppose that upon the field, when this gentleman called Captain Tuckett was wounded, at that moment, Lord Cardigan not being present, he had said, "Allow me to go home; here is my address;" I apprehend that then your lordships would have allowed the card to be given in evidence, as showing that this was the address given upon the occasion, and at which this person who gave it was afterwards found by the witness.

Sir William Follett. I do not know whether I need offer any observations to your lordships in reply; but that which my learned friend is now contending for seems to be contrary to what one has always understood to be the ordinary rules of evidence. The rules of evidence are undoubtedly the same in civil as in criminal cases, but it is not usual in cases of a criminal nature to press matters in evidence as to which any doubt might exist; but this prosecution is not conducted in the usual mode. My learned friend the Attorney General is now attempting to offer in evidence what I submit to your lordships is clearly contrary to the ordinary rule. He is seeking to prove an important fact in this case, by an apparent admission on the part of the noble earl at your lordships' bar, without any evidence whatever that the noble earl was a party to that admission, or that he was aware of it, or that he knew any thing that was written upon the card at all. I ask your lordships whether this can be made evidence against the prisoner, to prove a fact which your lordships must now see, from the way in which this is pressed on the other side of the bar, is a most important fact in this prosecution; whether your lordships are prepared to say that that fact can be proved by the statement of a person not even known, for it does not appear who it was that gave the card. The witness speaks of a stranger that

came up, and who he did not know at the time was a surgeon. It does not appear whether he gave it, or who gave it; but it does appear that, whoever gave it, Lord Cardigan never saw it, and did not know what was written upon it, and therefore it is not at all brought home to him. I do therefore submit to your lordships, that upon the plainest rules of evidence nothing written upon the card can be read in evidence against the noble earl.

Lord High Steward. The inconvenience of clearing the house is so great that I should rather venture to propose that the decision of this question, if your lordships should be called upon to decide it, had better be postponed.

Mr. Attorney General. Then, with the permission of your lordships, I will call Sebastian Byron Dann.

SEBASTIAN BYRON DANN *sworn.*

Examined by Mr. Attorney General.

Q. How old are you?

A. Fourteen last August.

Q. Are you the son of Mr. Thomas Dann, the last witness?

A. Yes.

Q. A miller at Wimbledon?

A. Yes.

Q. On the 12th of September last were you at home at your father's house?

A. Yes.

Q. In the afternoon of that day did you observe any thing that attracted your notice?

A. Yes.

Q. What was it?

A. I was standing at the mill door, and I saw a post chaise on the road.

Q. How far from your father's mill?

A. Nearly half a mile.

Q. Where did the post chaise go to?

A. It stood still.

Q. Did you see only one post chaise?

A. Not at that time.

Q. Did you afterwards see another post chaise?

A. Yes.

Q. How far off was it?

A. Pretty near a quarter of a mile.

Q. From where?

A. From the mill.

Q. Did you see any persons coming from the post chaises?

A. No.

Q. Did you see any persons near?

A. Yes; there were two persons about a hundred yards from the post chaises.

Q. What were they doing?

A. They were walking about.

Q. Had they any thing in their hands?

A. I could see that they had something, but I did not know what it was.

Q. What did you next observe?

A. I went upon the stage of the mill then.

Q. And being upon the stage of the mill then, what did you see?

A. I saw gentlemen walking about then.

Q. How many were there that you saw?

A. Five.

Q. How were they arranged?

A. There were two at one place and two at another, and one at the corner of the white house garden.

Q. Was that Mr. Currie's garden?

A. Yes.

Q. What did they do?

A. They separated.

Q. Who separated?

A. The two.

Q. Could you observe what they had been doing?

A. No.

Q. After they separated, where did they go to?

A. They walked about for a little while, and then two of the opposite parties came and met.

Q. What was then done?

A. They walked about for a minute or so, and then went and knelt down together.

Q. Were they pretty near each other when they were kneeling down?

A. Yes; close together.

Q. What did those two do that had been kneeling close together?

A. They got up in about two or three minutes, and stood back to back, and walked about five or six paces from each other.

Q. What was then done?

A. They then beckoned to the other two gentlemen, and then the gentlemen came, and they took pistols and fired.

Q. The gentlemen that were beckoned to came, and they took pistols and fired?

A. Yes.

Q. Do you know who either of those gentlemen was that fired?

A. I did not know at the time.

Q. Can you say whether the noble lord at the bar was one of them?

A. Yes.

Q. Do you now know who the other was?

A. Yes.

Q. Who?

A. Captain Tuckett.

Sir William Follett. You had better ask him who told him so.

Mr. Attorney General. Having fired, what was then done?

A. The seconds gave them another pistol.

Q. Each of them?

A. Yes.

Q. How near were you at that time?

A. I was about a hundred yards from them.

Q. When they had got another pistol, what was done?

A. The seconds came away from them, and they fired again directly.

Q. What did you then observe?

A. I went up to them.

Q. You say that his lordship was one of them?

A. Yes.

Q. Did you observe any thing in his lordship's hand?

A. No, not then.

Q. What did you observe?

A. My father was up there then.

Q. Tell us what you saw?

A. I saw the gentleman, and I saw the doctor examining the wound.

Q. Was that one of the gentlemen that had fired?

A. Yes.

Q. You say you saw the doctor examining the wound?

A. Yes.

Q. Could you see whether the gentleman was wounded?

A. Yes.

Q. How do you know that he was wounded?

A. I saw the blood.

Q. Did you see much blood?

A. Yes; there was a good deal.

Q. Where did he seem to be wounded?

A. Just at the top of his hip.

Q. You say your father was there before?

A. Yes.

Q. What was then done?

A. They walked up to our house.

Q. To the mill?

A. Yes.

Q. Did you go along with them?

A. Yes.

Q. What became of them?

A. They stopped in our yard a little while.

Q. About how long did they stop in your yard?

A. A quarter of an hour or twenty minutes.

Q. What became of them then? Did any of them go into your house?

A. Yes.

Q. Which of them?

A. Captain Tuckett and the doctor.

Q. How long did they remain in your house?

A. About five minutes.

Q. What became of them after they left your house?

A. They got into one of the post chaises; the wounded man, and the doctor, and one of the other gentlemen.

Q. And they drove off?

A. Yes.

Q. What became of my Lord Cardigan and the other gentleman?

A. My father walked along with them over to the other post chaise.

Q. And then you lost sight of them?

A. Yes.

Cross-examined by Mr. Serjeant Wrangham.

Q. Have you ever been examined on this subject before?

A. Yes.

Q. Before the magistrates?

A. No.

Q. Before the Grand Jury?

A. Yes.

Q. Who told you to go before the Grand Jury?

A. I had a subpœna.

Q. Who gave you the subpœna?

A. Mr. Busain.

Q. Had you been examined by any one before you went before the grand jury?

A. No.

Q. You had not told any one what you went to say?

A. No.

Q. Have you since told it to any one?

A. No.

Q. You have not told it to any one since?

A. I went to the Home Office.

Q. Did you tell it to any one there?

A. Yes.

Q. Did you go with your father?

A. Yes.

Q. And you were examined by Mr. Vizard, I suppose?

A. Yes.

Q. You say when you first saw these gentlemen you were at the door of the mill?

A. Yes.

Q. Was your father there with you?

A. No.

Q. Where was he?

A. I think he was up at the top.

Q. Then you went upon the stage of the mill?

A. Yes.

Q. Was your father there?

A. Yes.

Q. You were first at the door of the mill?

A. Yes.

Q. How far is it from the door of the mill to the place where you saw these gentlemen?

A. Two hundred and twenty yards.

Q. About a hundred yards from the post chaises, you told the Attorney General?

A. No; about half a mile.

Q. Did you not tell the Attorney General that the spot where these gentlemen were, when you first saw them, was a hundred yards from the post chaises?

A. Yes; then they walked about.

Q. They were a hundred yards from the post chaises?

A. Yes.

Q. Were the post chaises together there?

A. No.

Q. Then how came you to say that they were a hundred yards from the post chaises?

A. They were about a hundred yards from the post chaises when I first saw them.

Q. The chaises were not together?

A. No.

Q. How far were the chaises from each other?

A. About a quarter of a mile.

Q. Now, I only want you to explain your answer; how you came to say that the parties were a hundred yards from the post chaises, if one chaise was a quarter of a mile from the other?

A. The parties were not together. There were two parties; two in each party. Then two of the gentlemen were about a hundred yards from one post chaise, and two from the other.

Q. Then do you mean that two of the gentlemen whom you afterwards saw kneel down were a hundred yards

from one of the chaises, and the other two gentlemen were a hundred yards from the other chaise?

A. Yes.

Q. And the two chaises were a quarter of a mile apart?

A. Yes.

Q. Then the two gentlemen whom you afterwards saw kneel down, I suppose I may take it that they were about a quarter of a mile from the other two gentlemen?

A. One of each party knelt down. The gentlemen separated.

Q. Did not you tell me just now that the two gentlemen that knelt down were a quarter of a mile from one of the chaises, and the other two gentlemen a quarter of a mile from the other chaise?

A. I meant that the gentlemen separated, and two of them met.

[*A former question and answer were read to the witness as follows:*]

"Then do you mean that two of the gentlemen "whom you afterwards saw kneel down were a hundred "yards from one of the chaises, and the other two "gentlemen were a hundred yards from the other "chaise?—"Yes."

Q. Do you repeat that answer, that the two gentlemen whom you afterwards saw kneel down were a hundred yards from one of the chaises, and the other two gentlemen a hundred yards from the other chaise?

A. No.

Q. Having had the previous question and answer read to you, will you explain what you mean?

A. I mean that when I first saw the gentlemen they were about a hundred yards off from the post chaise, and then both the parties separated, and two of them came

and met, and then walked about a little while together, and kneeled down.

Lord Rossie. They did not kneel down when you first saw them?

A. No.

Mr. Serjeant Wrangham. When you first saw them, were they standing two in one couple, and two in another, or all four together?

A. Two in one couple, and two in another.

Q. Were one of those couples the two gentlemen who afterwards knelt down, and the other couple the two gentlemen who did not kneel down?

A. They were not together,—the two gentlemen that did not kneel down.

Q. At this time that you are speaking of, when the gentlemen knelt down, how far were they from you?

A. They were about two hundred and twenty yards.

Q. Could you distinguish who the persons were that knelt down?

A. No.

Q. Could you distinguish who the parties were who did not kneel down?

A. No; not at that time.

Q. Could you at that time have told us whether Lord Cardigan was one of the parties that knelt down or not?

A. No, he was not.

Q. How is it that you can take upon yourself to say that he was not one of the parties that knelt down, if you could not distinguish who the parties were?

A. I saw who they were. The Earl of Cardigan was not with them when they were kneeling down.

Q. Do you mean to say that you could at that distance distinguish the parties who knelt down?

A. I could see who they were.

Q. That is distinguishing them, is it not?

A. Yes, from the other two.

Q. Then you tell their lordships now that you could distinguish them at two hundred and twenty yards distance?

A. I could distinguish them from the other two.

Q. That is to say you could distinguish them from the other parties who were present?

A. Yes.

Q. How long did you remain upon the stage of the mill?

A. Not a minute hardly.

Q. Were you there when the firing took place?

A. No.

Q. Where were you then?

A. When the last firing took place I was half way from the gate to the place. I was up on the stage at the first firing, and then I ran down directly.

Q. Was your father on the stage with you?

A. No.

Q. How came you to stay there?

A. I had only got up there just before they fired; about a minute or a little more than a minute before they fired.

Q. Was your father there when you got up?

A. No.

Q. Did you see where your father was at that time when you first got on the stage?

A. He was at the gate then.

Q. Did you see him there?

A. No, I could not see him, but he said he was at the gate.

Q. Could you see where your father was?

A. No.

Q. But you are sure that he was not on the stage?

A. Yes.

Q. And then you remained there a minute?

A. Not after the firing.

Q. From the time you first went up?

A. Yes.

Q. You remained there till after the first shot was fired?

A. Yes.

Q. Was it one or two shots that you heard?

A. There were two shots.

Q. But at the first firing you heard one report?

A. Yes.

Q. And the same thing when the second firing took place?

A. Yes.

Q. That is so?

A. Yes.

Q. Did you follow your father to the ground?

A. Yes; he was there when I was about half way.

Q. Then you saw one of the gentlemen wounded afterwards?

A. Yes.

Q. Where did you see him?

A. He was on the ground then.

Q. He was on the ground when you saw the blood that you speak of?

A. Yes.

Lord Wynford. Do you mean lying on the ground, or standing on the ground?

A. Standing on the ground.

Mr. Serjeant Wrangham. Did you see him after he was taken to the mill?

A. Yes; I saw him get into the carriage.

Q. That is the last you saw of him?

A. Yes.

Q. You have never seen that gentleman since?

A. No.

Q. Nor before?

A. Only when I saw him on the common.

Q. All that you know of him is, that you saw a gentleman wounded there whom you did not know, and whom you have never seen again?

A. Yes.

Q. Then, when you speak in your evidence about Captain Tuckett, you mean to speak of this gentleman who was wounded?

A. Yes; my father told me it was Captain Tuckett.

Q. You have been told by your father, but of yourself you know nothing, except that a gentleman came there and was wounded whom you did not know and have never seen since?

A. No.

Re-examined by Mr. Attorney General.

Q. Were you upon the stage of the mill when you first observed the carriages?

A. No.

Q. Where were you when you first observed the carriages?

A. At the mill door.

Q. And then you got up upon the stage?

A. Yes.

Q. How were the gentlemen ranged when you first saw them; how near to the carriages?

A. They were about a hundred yards apart from the carriages?

Q. Were they two and two?

A. Yes.

Q. How far do you think they were, the one party from the other?

A. About a hundred and fifty yards.

Q. Then did you see one from each party go and meet the other?

A. Yes.

Q. Of the two who knelt down, was there one of each party?

A. Yes.

Q. Did you see that from the stage of the mill?

A. Yes.

Q. What interval do you think there was between the first shots and the second shots?

A. It might be a minute.

Q. How far were you from the mill when you heard the second shots fired?

A. About a hundred yards, or a little more.

Q. Did you immediately go up to the place where the gentlemen were?

A. Yes.

Q. Did you observe the wounded gentleman; had he any thing in his hand?

A. No.

Q. Did you observe my Lord Cardigan, whether he had any thing in his hand?

A. Not when I got up there.

Q. How far was his lordship from the wounded gentleman?

A. About a dozen yards.

Q. You say that you were examined. Is this gentleman, Mr. Vizard, the gentleman that examined you?

A. Yes.

Q. He took down your evidence?

A. Yes.

Q. With a view to this trial?

A. Yes.

Lord Audley. Do not people sometimes shoot small birds on the common?

A. Yes.

Q. How do you know that the first shot you heard did not proceed from some of those persons?

A. I cannot say as to that, but I saw smoke from the pistols.

Q. Could you see the pistols?

A. I could see that they had something I supposed to be pistols.

Q. You saw something in their hands?

A. Yes.

Q. And you saw smoke come from them?

A. Yes.

Q. And you heard the reports?

A. Yes.

The witness was directed to withdraw.

SARAH DANN *sworn.*

Examined by Mr. Waddington.

Q. Are you the wife of Mr. Dann, the miller of Wimbledon?

A. I am.

Q. Were you at your husband's mill on the afternoon of Saturday, the 12th of September last?

A. I was.

Q. Did your husband give you any directions to watch upon that occasion?

A. Yes.

Q. In consequence of what your husband said where did you go?

A. On the stage of the mill.

Q. Tell us what you saw when you went upon the stage of the mill?

A. I saw two gentlemen kneeling in the direction towards the gate, and one walking to the right and the other to the left.

Q. Was that on Wimbledon Common?

A. Yes.

Q. About what distance from your husband's gate were they kneeling?

A. I believe it is two hundred and twenty yards.

Q. It has been measured, no doubt?

A. Yes.

Q. Where were the two other gentlemen?

A. One was walking to the right and the other to the left.

Q. And then there were the gentlemen that were kneeling?

A. Yes, and one standing at the corner.

Q. Did you see a fifth gentleman?

A. Yes.

Q. Where was he standing?

A. At the corner, at a greater distance, nearer the road side.

Q. Was that near Mr. Currie's garden?

A. Yes, it was.

Q. What did the gentlemen whom you saw kneeling do afterwards?

A. I saw them in the act of knocking something into two pistols, hammering, each of them one.

Q. Was that while they were kneeling?

A. Yes, it was.

Q. What did you see them do afterwards?

A. I saw them apparently hold the two pistols up together.

Q. Was each holding one pistol?

A. Yes.

Q. After they had apparently held the pistols up, what did they do then?

A. They stood upright.

Q. What did they do when they had got up?

A. They turned round and walked a few paces from each other, in different directions.

Q. Were they going back to back?

A. Yes.

Q. How far did they walk from each other, do you think?

A. About five or six paces.

Q. Each five or six paces?

A. Yes.

Q. What did they do when they stood still; when they stopped?

A. Each beckoned to one of the gentlemen that was standing at a distance.

Q. What followed next?

A. The gentlemen came towards them.

Q. Did they come up to them?

A. Yes.

Q. One gentleman up to one, and the other up to the other, I suppose?

A. Yes.

Q. What was done then?

A. They each of them took a pistol.

Q. Each of whom?

A. Each of the gentlemen that were beckoned to.

Q. Did you see the pistols given to them?

A. I did.

Q. Who gave them the pistols?

A. The two that had been kneeling on the ground.

Q. Where did the gentlemen who had been kneeling go after they had each given a pistol to one of the others?

A. They stood a little to the right of them from me.

Q. What happened then?

A. The gentlemen turned round, half-side face apparently, and fired at each other.

Q. Did you see the pistols at that time?

A. I did.

Q. Was it a sunshiny day; could you see them glistening?

A. Yes, it was.

Q. Did you give information to your husband?

A. Yes, I called to him; he was just going out at the gate.

Q. When was it you gave information to your husband?

A. When I was on the stage I said, "I think I can see the pistols;" he said, "Stand still, and I will go and wait upon them ——"

Q. I do not want what you said to him, but when was it you gave him the information; before the pistols were fired?

A. Before the pistols were fired; I thought it was a duel about; but after the pistols were fired I called to him as he was going out at the gate, and said ——

Q. Do not repeat that; what I asked you was, when was the time that you called to your husband?

A. When he was advancing towards them.

Q. What happened after you saw the first shots fired?

A. I saw them throw the pistols on the ground; I saw one gentleman advance three or four steps towards the other gentleman and take a second pistol, and step back again, and as soon as possible fire a second.

Q. The first pistols you say were thrown down, and then you saw one of the gentlemen advance a few steps towards the other gentleman, and take another pistol?

A. Yes.

Q. Did they both fire a second pistol?

A. They did.

Q. Were they standing in the same place when they fired a second time as when they fired the first time?

A. Yes.

Q. Did you see your husband go up to them?

A. I did.

Q. Did you afterwards see all the party come to the mill together?

A. No; I saw two come first.

Q. Which were those, do you know?

A. The gentleman that was wounded and the one that attended him.

Q. How did you know he was wounded?

A. I saw them unfastening his clothes.

Q. Where was he when you saw them unfastening his clothes?

A. Standing where he was.

Q. Where the shot was fired?

A. Yes.

Q. Are you quite sure that the gentleman whose clothes you saw unfastened was the same gentleman who had fired one of the pistols?

A. Yes.

Q. When this gentleman and another came to the house did you give them any thing; did they ask for any thing?

A. I was not at the house when they went into the house first.

Q. Did you afterwards give them any thing?

A. Yes; I followed them and gave them a basin of water and a towel.

Q. Did they go into a room together?

A. They did.

Q. Did the other gentlemen afterwards come to the house?

A. They came into the yard.

Q. Did your husband come with them?

A. He came with one; the other gentleman came a little before him.

Q. Who was the gentleman that he came with?

A. He has since told me it was Lord Cardigan.

Q. See if you see him here, just before you?

A. That is the gentleman, I think (*pointing to the Earl of Cardigan*).

Q. That is the gentleman that your husband came with?

A. Yes.

Cross-examined by Sir William Follett.

Q. I am not quite sure whether I understood you. Where were you during the transaction you have been speaking of?

A. On the stage of the mill.

Q. During the whole of the time?

A. During the whole of the time.

Q. When did you first go up on the stage on that morning?

A. I went when I was called.

Q. Who called you?

A. My little boy.

Q. Do you know at all at what time it was?

A. It was about five o'clock in the afternoon.

Q. Did you remain upon the stage during the whole of the time until the wounded gentleman came to your house?

A. I did.

Q. I observe that you have all, you and the witnesses before, said that the distance from your house to this spot was two hundred and twenty yards; has it been measured?

A. I think it has.

Q. And could you at the distance of two hundred and twenty yards see the persons knocking the pistols?

A. Yes; I had a commanding view where I stood.

Q. What do you suppose to be the distance from where you are standing now to the end of this house?

A. I do not know. I should not have thought it had been more than a hundred yards; not at first, when I saw them.

Q. You should not have thought what was more than a hundred yards?

A. Not the distance from the mill to where the gentlemen were standing.

Q. But you say it was two hundred and twenty yards?

A. That is what I have been told.

Q. At the distance of two hundred and twenty yards could you see persons knocking and hammering?

A. Yes, I could.

Q. Could you distinguish their features?

A. I could see their countenances.

Q. Could you distinguish the countenances or features of any of the gentlemen standing at the other end of this house?

A. I mean, I could see if they were red or pale when my husband went to them.

Q. Can you see whether the gentlemen standing at the other end of this house are red or pale?

A. Yes, I can.

Q. You are sure you can; are you quite sure of that? Look; can you distinguish whether the gentlemen are red or pale at the other end of the house?

A. I can see better on the common, where I am more accustomed to look.

Q. Can you see better in some places than in others?

A. I have been there a good many years, and I can discern any thing sooner than a stranger might.

Q. Therefore that is the place where you can see best, is it?

A. I think it is.

Q. Upon the common, where you see best, can you distinguish the features of gentlemen two hundred and twenty yards off, and whether they are red or pale?

A. They looked to have red faces in the sun.

Q. All the gentlemen had red faces, had they?

A. No; I do not know that all of them had.

Q. Had they all red faces?

A. No.

Q. How many had red faces? Can you tell me who has been telling you this story, or who has been examining you upon this subject?

A. No one.

Q. No one! Have you never been examined as a witness?

A. No.

Q. Were you not before the grand jury?

A. Oh yes, I was; I forgot that.

Q. Who desired you to go before the grand jury?

A. I was subpœnaed.

Q. Who subpœnaed you, do you know?

A. I forget.

Q. Do you know who was conducting the prosecution at that time?

A. I heard the name of Mr. Hobler; I do not know whether that was the gentleman.

Q. Was it he that subpœnaed you?

A. I really cannot say.

Q. But do not you know the person who subpœnaed you?

A. No, I do not.

Q. Where did he subpœna you?

A. The subpœna was brought to the house.

Q. And then you went before the grand jury?

A. Yes.

Q. Were you not examined by any one before you went before the grand jury?

A. No.

Q. By nobody?

A. No.

Q. You are quite certain of that. Recollect yourself;

were you examined by any one before you went before the grand jury?

A. No.

Q. No one at all?

A. No.

Q. Then am I to understand you to state that the first time you gave any account of what you saw was before the grand jury?

A. Yes.

Q. You are certain?

A. Yes.

Q. Were you not examined before the magistrates?

A. No, I was not.

Q. Were you examined more than once before the grand jury?

A. I went in twice or three times on one day.

Q. Giving the same account over and over again, I suppose?

A. Answering questions that they might ask.

Q. Well now, will you allow me to ask you whether you have been examined at the Home Office by Mr. Vizard?

A. I have.

Q. Were you subpœnaed by him to attend here?

A. I had notice.

Q. Had you no subpœna?

A. I do not think it was a subpœna.

Q. Were you all examined together, you, and your husband, and your son?

A. Each separately.

Q. In the presence of one another?

A. No.

Q. You were called in separately?

A. Yes.

Q. What was stated was taken down in writing?

A. I do not know that it was.

Q. Was there no one there writing at the time?

A. There was a gentleman writing.

Q. That was last week, I believe?

A. Last Saturday week.

Q. To come back to the transaction; you say that you went up to the stage where you were ordered to go; who ordered you?

A. My son called to me.

Q. Did not your husband give you any directions to go up?

A. I think he sent the boy; he was there himself.

Q. Was your husband upon the stage when you got there?

A. Yes.

Q. Were you told to watch?

A. Yes.

Q. And to give notice to him?

A. I was to stand and see what the gentlemen were doing.

Q. Were you told to give notice to him as soon as you discovered that they were going to fight a duel?

A. He left me there, and went, as I expected, to them ——

Q. You must answer my question, if you please. Were you told to give notice to him as soon as you discovered they were going to fight a duel?

A. He told me to watch what they were about, and he would be there again directly.

Q. Then he did not tell you to give him any notice when you discovered that they were about to fight a duel?

A. No, he did not.

Q. You were to watch, and he would be there again directly. Did you give him any notice at all?

A. Yes; I called to him.

Q. If I understand you, you did not call to him until after the shots were fired; is that so?

A. He went from me directly; he told me he suspected what was going forward ——

Q. Cannot you answer my question? Did you call to him before or after the shots were fired?

A. I did not call to him; he had not gone above a few steps before I said, "I think I see pistols."

Q. Did you say any thing before the pistols were fired?

A. Yes; I said I thought I saw pistols.

Q. You said that before the pistols were fired?

A. Yes.

Q. Were the first pistols fired while you were speaking to your husband?

A. He had gone down.

Q. You tell me you had spoken to him after he had gone down?

A. No; he had to walk a few steps before he got off the stage.

Q. Had you spoken to him?

A. Yes.

Q. After he had gone down did you call to him, after the shots were fired?

A. After the first shots were fired I called to him and told him to run.

Q. Did you hear the report of two pistols or one only?

A. Two.

Q. Were they close together?

A. Very near.

Q. What do you suppose was the interval between the first firing of the pistols and the second; were they close one upon the other?

A. The first time each of them fired, do you mean?

Q. You told me you heard the first shot while your husband was at the gate?

A. Yes.

Q. A second shot you say was fired; how soon after was it; in the course of a minute or so, before he could get down to the gate?

A. He just got up to the gentleman that was farthest from me when the second shot took place.

Q. Am I to understand you to say that you saw the second pistols put into the hands of the gentlemen?

A. Yes, I did.

Q. They fired immediately, did they?

A. Yes.

Q. As soon as the pistols were put into their hands?

A. Yes.

Q. Did you know either of the gentlemen before?

A. No.

Q. Have you ever seen the noble lord who is sitting here since that day?

A. No.

Q. Not until now?

A. No.

Q. You did not see him before the magistrates, or any where else?

A. No.

Q. You now recollect him?

A. Yes.

Q. Have you seen any other of the gentlemen since?

A. No.

Q. Not any of them?

A. No.

Q. And you knew none of them before that day?

A. No.

The Witness was directed to withdraw.

Sir JAMES EGLINTOUN ANDERSON, M.D., *sworn.*

Lord High Steward. Sir James Anderson, with the permission of the house, I think it my duty to inform you, after the opening we have heard made by the Attorney General of the facts of the case, that you are not bound to answer any question which may tend to criminate yourself.

Mr. Attorney General. Of what profession are you?

A. I am a physician.

Q. Where do you live?

A. New Burlington Street.

Q. Are you acquainted with Captain Tuckett?

A. I must decline answering that.

Q. Were you on Wimbledon Common upon the 12th of September last?

A. I must decline answering that also.

Q. Were you on that day called in to attend any gentleman that was wounded?

A. I am sorry to decline that again.

Q. Can you tell me where Captain Tuckett lives?

A. I must decline the question.

Q. Has he a house in London?

Sir William Follett. He declines to answer the question.

A. I have already said that I decline answering the question.

Mr. Attorney General. Where did you last see Captain Tuckett?

Sir William Follett. We have no right, my lords, to interfere in this case; but the witness having several times declined to answer the question, I apprehend it is not regular for the Attorney General, by circuitous questions, to endeavour to get him to answer.

Mr. Attorney General. I have never pressed him in any question I have put. (*To the witness.*)—Do you decline

answering any question whatever respecting Captain Tuckett?

A. Any question which may tend to criminate myself.

Q. And you consider that answering any question respecting Captain Tuckett may tend to criminate yourself?

A. It is possible it would.

Q. And on that ground you decline?

A. Yes.

Mr. Attorney General. Then, unless your lordships wish to ask any question of this witness, he may withdraw.

The witness was directed to withdraw.

Mr. JOHN BUSAIN *sworn.*

Examined by Mr. Attorney General.

Q. Are you an inspector of the Metropolitan Police?

A. I am.

Q. Where were you on the evening of the 12th of September last?

A. On duty at the station-house at Wandsworth.

Q. Did any persons arrive at the station-house?

A. They did.

Q. Who were they?

A. A post chaise drove up to the door about a quarter before six o'clock in the evening, and two gentlemen got out; one of them came up to the station-house, and gave a tap; I turned and looked out, and I perceived that it was his lordship; I bowed and asked his business.

Q. The noble lord the Earl of Cardigan?

A. The Earl of Cardigan.

Q. Was there another gentleman with him?

A. Yes.

Q. Who was that?

A. Captain John Douglas he gave his name I did not know either of the gentlemen before.

Q. Was Dann of Wimbledon, the miller, there?

A. I did not see Dann immediately; I bowed to his lordship, and asked him what his business was.

Q. Had you known my lord before?

A. I had not. I saw that he was a gentleman.

Q. You asked him what his business was. What did his lordship say to that?

A. He said he was a prisoner he believed.

Q. Just give us the language that his lordship used?

A. "I am a prisoner, I believe." "Indeed, sir," said I; "on what account?" The door was opened, and his lordship walked in. His lordship said, "I have been fighting a "duel, and I have hit my man; but not seriously, I believe; "slightly; merely a graze across the back." His lordship passed his hand in this way when he said "a graze across "the back." He then pointed over his shoulder and looked over, and said, "This gentleman also is a prisoner; my "second, Captain Douglas."

Q. Did you say any thing to his lordship?

A. His lordship passed his hand into his pocket; still he was a stranger to me; he passed his left hand into his right-hand pocket, and took out divers cards, and in the act of taking them out some of them fell on the floor, and he presented me with his card, and I saw "The Earl of "Cardigan, of the 11th Dragoons," I believe; "The Earl "of Cardigan," at least. I saw his name, and I then alluded to the duel, and said, "Not with Captain Reynolds, I "hope?" and his lordship spurned the idea of fighting a duel with one of his own officers.

Q. What did he say?

A. "Oh no; by no means. Do you suppose that I "would fight with one of my own officers?"

Q. Their lordships wish you to repeat, as nearly as you can, the words of the Earl of Cardigan upon that occasion?

A. To the best of my recollection his lordship's reply

was:—when I said I hoped it was not with Captain Reynolds, he stood up erect, and seemed to reject it by his action with the utmost disdain, and said "Oh no; do you "suppose I would fight with one of my own officers?" Those were the words, to the best of my recollection.

Q. Were there any pistols produced?

A. There were. I have them.

Q. From whom did you receive them?

A. I received the pistols from Dann the miller, who came in after Captain Douglas. Captain Douglas, when his lordship made the remark, was in the act of coming in.

Q. Do you produce those pistols?

A. I do. (*The witness produced two cases.*)

Q. Are those the two cases?

A. Those are the two cases; they have not been out of my possession since. His lordship claimed the case marked with his crest.

Q. This case?

A. This is the crest of his lordship, I believe; he claimed this case. (*The case was opened.*) The other case has not been claimed at all.

Q. Have you had them in your custody ever since?

A. I have had them in my custody from that time, in my own house; in my own bed-room.

Q. How long did Lord Cardigan remain at the station house that night?

A. He remained no longer than till after I had taken the charge. I entered the charge, and took bail from his lordship to appear on Monday morning.

Q. And the same with Captain Douglas?

A. Yes; each jointly for the other.

Q. And they did appear?

A. Yes.

Q. Did you take Captain Tuckett into custody?

A. By order of the magistrates, I did.

Q. When?

A. Captain Tuckett appeared at the magistrates office on the 14th of October following.

Q. Did he give his name?

A. He gave his name.

Sir William Follett. Was Lord Cardigan at that time present there?

A. He was on bail ——

Q. Was Lord Cardigan at that time present, is the question I ask you?

A. No, he was not.

Cross-examined by Sir William Follett.

Q. If I understand you, on the 14th of October Captain Tuckett appeared before the magistrates; you had not taken him into custody?

A. I had not taken him into custody.

Q. Were you present before the magistrates on that occasion?

A. I was.

Q. My Lord Cardigan you say was not?

A. He was not.

Q. Attend to the questions. With regard to the former part of your examination; you have spoken of a conversation which you say took place between you and Lord Cardigan?

A. I have.

Q. Were you examined before the magistrates two days after this transaction took place?

A. I was; after his lordship was in my custody.

Q. That would be then on the 14th of September?

A. On the 14th of September.

Q. Were you examined again after that before the magistrates?

A. I was.

Q. When was that?

A. The Saturday following; the 19th, I think.

Q. That was the second time?

A. Yes.

Q. Were you examined a third time?

A. Yes.

Q. Upon your oath, I presume, each time?

A. Upon my oath each time.

Q. I now ask you, upon your oath, if, either the first or the second time you were examined before the magistrates, you made any statement that Lord Cardigan had told you he had hit his man, or any thing like it?

Mr. Attorney General. I believe, my lords, according to the practice established by all the learned judges, that that is not a question which can be put without putting in the depositions which were no doubt taken.

Sir William Follett. Was there any deposition taken? We shall see how these Wandsworth magistrates have discharged their duty.

Mr. Attorney General. It is always to be presumed that what is said in evidence is taken down in writing.

Lord High Steward (*to the witness*). Were the depositions upon these three occasions taken down in writing?

A. The whole of my evidence, as I stated it in the first instance, my lord, was not taken down, the clerk to the magistrates saying that he thought the expression that his lordship had made use of was irrelevant to the matter; it was not taken down in the first instance.

Sir William Follett. Now I ask you, upon your oath, if you stated before the magistrates on that occasion one word about Lord Cardigan having told you that he had fought a duel and had hit his man?

Mr. Attorney General. My Lords, I feel it my duty to object to that question, because it now appears that upon the witness being examined before the magistrate his deposition was taken down.

Lord High Steward. Sir William Follett, is there any objection to putting in the depositions?

Sir William Follett. I am not aware, my lords, whether there are any depositions, or, if there are, what they contain. I understand the fact to be this: that they have subpœnaed, on the part of the prosecution, the clerk to the magistrates; and he, as I understand, has refused to give us any information, and therefore I do not know what is to be proved, or whether the depositions are to be put in.

Mr. Attorney General. My lords, of that which my learned friend had just stated I know and can know nothing; but the depositions that have been taken would, I apprehend, be returned to this House in obedience to the writ of certiorari that was issued, and the depositions would now be before this high tribunal just as they would have been before the Central Criminal Court if the trial had there taken place.

Sir William Follett. Probably your lordships will see whether there are any depositions of the 14th September, or of the 19th, returned to this House.

Lord High Steward. The depositions returned to this House appear to have been taken on the 28th September; there are no other depositions returned.

Sir William Follett (to the witness). If I understand your answer to my question, you told me you had been examined before the magistrates on the 14th and on the 19th?

Lord High Steward. Do you propose to examine him to any thing that passed on the 14th?

Sir William Follett. Yes, my lord.

Lord High Steward. First of all, was the deposition taken down in writing?

A. I believe the words that I made use of were not taken down.

Q. Was some statement of yours taken down in writing?

A. Not to my knowledge.

Sir William Follett. No statement?

A. There was a statement taken down, but not the whole of the statement.

Lord High Steward. Was any statement that you made upon oath before the magistrates on the 14th taken down in writing?

A. It was in part.

Earl of Radnor. Was it read over to you after it was taken down in writing?

A. Yes.

Q. Did you sign it?

A. I signed so much as that.

Q. You signed what was taken down in writing?

A. Yes, I did.

Lord High Steward. It will be more regular to call the clerk to the magistrates.

Mr. Attorney General. My lords, I am utterly ignorant of these depositions; but, with your lordships' permission, I will call the clerk to the magistrates, who is in attendance.

Sir William Follett. But, wait a moment; we must finish with this witness first. (*To the witness.*)—I understood you to state that you were examined on the 14th September, and that some statement made by you was taken down in writing, and read over and signed by you; is that so?

A. Yes.

Q. Were you examined again before the magistrates on the 19th September?

A. I was.

Q. Was your statement then read over to you?

A. It was the same statement again that I had signed in the first instance; it was not taken down again, to my knowledge.

Q. Was it read over to you a second time?

A. It was.

Q. Were you asked whether you had any thing to add to your former statement?

A. I do not think, in the second instance, I was.

Q. Upon your oath, I ask you whether the question was not put to you, "Have you any thing to add to this statement?"

A. I do not think that the question was put.

Q. Will you undertake to swear that it was not?

A. I will not undertake to swear that it was not.

Q. I ask you, if you did not state upon that occasion, that you had not any thing to add to your former statement?

A. I did not.

Q. That you swear?

A. That I swear; nothing to that, because I still had spoken to the same subject.

Q. You undertake to swear that you did not state upon that occasion that you had nothing to add to the statement read over to you?

A. I was asked the question whether I had any thing to add to the former statement, and I said "No;" the statement I had made before to the magistrates.

Q. That was on the 19th of September, was it?

A. On the 19th.

Q. When was the first time you stated before the magistrates any thing respecting this expression used by my Lord Cardigan?

A. On Monday the 14th, in my first examination.

Q. Were you examined on the 28th of September?

A. I was.

Q. Did you make any statement then respecting the conversation before the magistrates?

A. I repeated the whole as I had repeated it in the first instance.

Q. Had you heard a great deal about this trial in the mean time; had it been the subject of a great deal of talk?

A. I had not had an opportunity of hearing a great deal of it.

Q. Had you read no newspapers about it?

A. I had read accounts in the newspapers.

Q. And you were examined, you say, for the last time, if I understand you, upon the 28th of September?

A. I was.

Q. Were you bound over to prosecute?

A. I was not.

Q. Not at any time?

A. I was bound over to prosecute in the case of Captain Tuckett, but not in the case of Lord Cardigan.

Q. Then who conducted the prosecution against my Lord Cardigan?

A. Superintendent Bicknell.

Q. What had he to do with it?

A. He was bound over by the orders of the magistrates.

Q. What magistrates?

A. The magistrates who presided on the committal of his lordship.

Q. They bound over Superintendent Bicknell to prosecute?

A. Yes; he being the head of the police in that district.

Q. Had you any communication with the Home Office at that time?

A. I had not.

A. You were bound over to prosecute in one case, and Mr. Bicknell in another, if I understand you?

A. Yes.

Q. Did you go before the grand jury?

A. I did.

Q. Upon several bills, or one only?

A. I went upon a bill of indictment; I do not know how many bills there were; I was only examined upon the one bill against his lordship.

Q. Were you not examined upon bills against other parties relating to this transaction?

A. As far as regarded Captain Tuckett I was examined.

Q. You were examined twice?

A. Twice at the same time.

Q. Upon the bill that was found and the bill that was thrown out?

A. Yes.

Q. You gave the same evidence, I suppose, upon both bills?

A. I did.

Q. Let me come to another conversation that you have deposed to. You have stated that when you saw Lord Cardigan you asked him, if I understand you, why he was there; is that so?

A. Not why he was there. I asked him, "What is "your business, sir?"

Q. Allow me to ask you, with reference to what you said of Captain Reynolds; when you found that his name was Lord Cardigan, you asked him whether he had been fighting with Captain Reynolds?

A. I did.

Q. Was not the answer that he gave to you, "It is not "my principle to fight with officers under my command?"

A. I showed the manner in which his lordship spoke, and I have given the reply of his lordship, to the best of my knowledge.

Q. Upon your oath were not these his words, "It is "not my principle to fight with officers under my com-"mand?"

A. I think the words were as I used them formerly.

Q. What were they?

A. "Oh no; do you think I would fight with one of "my own officers?" to the best of my knowledge.

Re-examined by Mr. Attorney General.

Q. On the 14th of September did you give the same account to the magistrates of your conversation with Lord Cardigan as you have given here?

Sir William Follett. You objected, Mr. Attorney, to my putting that question, and their lordships decided that it could not be put.

Mr. Attorney General. Their lordships decided that the question could not be asked without putting in the depositions. If you put in the depositions all objection is withdrawn.

Sir William Follett. Their lordships decided that I could not put the question on the part of the Earl of Cardigan, and surely my learned friend cannot do it without putting in the depositions.

Lord Lyndhurst. He cannot put the question even if he does put in the depositions.

Sir William Follett. No, my lord, he cannot.

[*The former part of the cross-examination of the witness was read.*]

Lord Brougham. Which of the two accounts you have given do you abide by? Was it that the magistrates asked you if you had any thing to add to your former statement, and you said "No;" or was it that the question was not asked you, and you did not answer?

A. I was simply asked the question, "Have you any "thing to add to your former statement?" Of course I took that as the statement I had made at large, and I replied, "No." I had nothing to add to my former statement, because I had made use of the exact words I have made use of to-day.

Sir William Follett. Was not the former statement, which had been taken down in writing, read over to you before the question was put whether you had any thing to add to it?

A. I think not. I think the book was opened in this way, and the question was put by the clerk, "Have you any "thing, Mr. Busain, to add to your former statement?" and I said, "No."

Sir William Follett. My lords, he before said that the former statement was read over to him before the question was put; he now says that he thinks it was not. Probably your lordships will allow me to put a question upon that. (*To the witness.*)—I ask you, upon your solemn oath, if the former statement was not read over to you, and if you were not asked whether you had any thing to add to it?

A. I think the question was asked of me before reading the statement, the book being opened in this way, "Have "you any thing to add to your former statement?" and then it was read over again afterwards, and then I was asked the question, "Have you any thing further to "add?"

Q. I understood you to state that the former statement you had made was read over to you; was that so?

A. That portion of it that was taken down in writing.

Q. The portion which was in writing, and signed, was read over to you?

A. Yes.

Q. Were you then asked the question, "Have you any "thing to add?"

A. "Have you any thing to add to your former state-"ment?"

Q. And you said, "No?"

A. I said "No." The statement was as I had stated it at large.

Earl of Radnor. Was it the whole statement that you had made on the 14th of September that was read over to you?

A. The whole statement was not taken down.

Sir William Follett. With great submission, my lords, that is asking the contents of the deposition, which we were not allowed to cross-examine to.

Mr. Attorney General. There can be no difficulty on the part of my learned friend, for the depositions are in court. I understand that the depositions of the 14th and 19th are here.

Sir William Follett. On the contrary, their lordships have told us that the magistrates have returned only the depositions of the 28th of September.

Mr. Attorney General. I am informed by a gentleman near me, Mr. Cross, that the depositions of the 14th and 19th are here, and ready to be laid upon the table.

Sir William Follett. But they ought to have been presented before.

Lord High Steward. It will be for their lordships to consider whether they shall be called for or not.

Earl of Radnor. When you were examined on the 14th of September, did you make that statement to the magistrates, or to the clerk who was writing out your deposition in order to show it to the magistrates?

A. I made the statement to the magistrates; I was asked the same question, if I had made that statement, on a subsequent examination before his lordship; I then said to Mr. Adolphus that I had made a statement in the first instance, and I appealed to his lordship, and he did not then deny it; he said there was a statement to that effect.

Q. You made that statement to the magistrates in the hearing of the clerk?

A. I did.

Q. And the clerk observed that it was not relevant?

A. I understood so.

Sir William Follett. I do not know, my lords, that I have any right to interpose when any question is put by any of your lordships, but when the counsel are prevented by the House from putting a question, I should submit that the question ought not to stand upon the notes.

Earl of Radnor. I asked the witness merely as to what the clerk said upon that occasion; that was my question, whether the clerk said that that was irrelevant.

Lord Wynford. Was not every thing taken down by the clerk?

A. It is not the custom in the first examination, when the magistrates intend to remand, to take down the examination in full. A minute is made sufficient to justify the magistrates in committing the party for re-examination till the whole of the evidence can be gone into.

The witness was directed to withdraw.

Mr. CHARLES WILLIAM WALTHEW *sworn.*

Examined by Mr. Waddington.

Q. Do you reside at No. 29 in the Poultry?
A. I do.
Q. Are you a chemist?
A. I am.
Q. Carrying on business there?
A. Yes.
Q. Do you know Captain Tuckett?
A. I do.
Q. Does he occupy a room in your house?
A. He occupies rooms.
Q. For what purpose does he occupy them?
A. As offices.
Q. Does he carry on business there?
A. Yes.

Q. How long has he carried on business in those offices?

A. Nearly fifteen months.

Q. Where is his house; where does he live?

A. Hamilton Place, New Road.

Q. What number?

A. No. 13.

Q. Tell me what his christian names are, if you know them?

Sir William Follett. Just allow me. You say that he lives at No. 13, Hamilton Place, New Road; were you ever at that house?

A. No.

Mr. Waddington. You can cross-examine him upon that.

Sir William Follett. No; you ought to put the question yourself, to ascertain his means of knowledge.

Mr. Waddington. I am now asking on another point.

Sir William Follett. But that must be founded on the preceding.

Mr. Waddington. Not at all. I ask now what his christian names are.

Sir William Follett. Then I object.

Mr. Attorney General. We may ask what are the christian names of the gentleman who took rooms at the Poultry.

Sir William Follett. I must object to this course.

Lord High Steward. What is the question?

Mr. Waddington. What are the christian names of this Captain Tuckett that occupies offices at your house?

Sir William Follett. That question can have no relevancy to the inquiry before your lordships, unless the person whose christian name they are inquiring into is connected in some way with the transaction; and I think it would be fairer on the part of the prosecution not to take an answer to a question they put into the witness's mouth, without ascertaining whether he does or does not know the fact to which he deposes. Your lordships observe the question

my learned friend put: he asked where Captain Tuckett lived, and the answer was, 13, Hamilton Place, New Road, for the purpose of identifying this Captain Tuckett who carries on business in the Poultry with a Captain Tuckett who lives in that place. I wished my learned friend in the first place to inquire whether the witness knew the fact, and I suggested the question whether he had been to that house, or had ever seen Captain Tuckett there, and he answered in the negative, that he never had; and therefore he shows that he does not know the fact that is to lead to the second question.

Lord High Steward. Does that sustain your objection, because the question is as to the christian names of some person whose surname is Tuckett.

Mr. Attorney General. Who is a tenant of the witness.

Lord High Steward. It will not be relevant, unless they connect that person whose christian name is spoken to with this transaction.

Sir William Follett. Then I submit to your lordships that it would be far more regular for my learned friends to prove in the first instance the fact of the witness having the means of knowledge, than to put the question first and prove the foundation afterwards.

Lord High Steward. I agree with you, speaking individually, that there is no proof at present that that person lives at 13, Hamilton Place, New Road.

Mr. Attorney General. I perfectly concur, my lords, in what has been stated, that there is no evidence of that at this moment; but, my lords, we now simply ask what is the name of that individual who rents rooms of the witness at the Poultry. Surely there can be no objection to that question, and I am surprised that any objection should have been raised.

Sir William Follett. Then the preceding question and answer should be struck out, if you say there is no evidence of the fact.

Mr. Waddington. Answer that question; if you know what the Christian names of that gentleman are, state them.

A. The only names I know him by are Harvey Tuckett.

Q. You have said that he lived at 13, Hamilton Place; how do you know that?

A. As being the reference he gave me when he took my premises.

Mr. Attorney General. That is a declaration accompanying the act.

Sir William Follett. I do not know whether my learned friend means to contend that that is evidence to be put upon your lordships' notes or not.

Mr. Attorney General. I have no hesitation, if my learned friend asks the question of me, in saying that I think it is evidence in this case, and that it ought to be received. Here is a person of the name of Tuckett who takes premises——

Lord High Steward. We are hardly in a position to say till we know when the reference was given. When was it that the reference was given?

A. About last November twelvemonth.

Mr. Attorney General. Upon what occasion?

A. When he took my premises; when he came after taking my premises.

Q. Have you sent messages and addressed letters to him there?

A. Certainly not.

Q. Have you sent parcels to him there?

A. I have forwarded a hamper.

Sir William Follett. That is, sent it by some other person

A. Yes.

Lord Lyndhurst. What business does that Captain Tuckett carry on at your office?

A. An East India and colonial agent.

Sir William Follett. I have no question, my lords, to put to this witness.

Mr. EDWARD SEPTIMUS CODD *sworn.*

Examined by Mr. Attorney General.

Q. What are you by business?

A. An army agent.

Q. Do you know Captain Tuckett?

A. I do.

Q. Is he in the army now?

A. He is on half pay.

Q. Do you know in what regiment he has been?

A. In the 11th Light Dragoons.

Q. Do you know who pays him his half pay?

A. The Paymaster General of her Majesty's forces.

Sir William Follett. How do you know that?

Mr. Attorney General. Do you receive his half pay for him?

A. I receive his half pay for him.

Q. How long have you received his half pay for him?

A. Since he retired to half pay.

Q. How long is that since?

A. I do not know.

Q. About how long?

A. It may be three or four years.

Q. How often is his half pay payable?

A. Quarterly.

Q. And you have received it for him during that time?

A. I have.

Q. Have you paid it to him?

A. I have.

Q. Where have you paid it to him?

A. At 15, Fludyer Street, my residence.

Q. Have you never seen him except there?

A. I have not.

Q. When did you see him last?

A. On the 31st or about the 31st of December.

Q. When had you seen him before that?

A. About the 30th of September.

Q. Where did you see him then?

A. At my office.

Q. Did he receive a quarter's half pay at that time?

A. At that period.

Q. What is his christian name?

Sir William Follett. Do you know his christian name?

Mr. Attorney General. What christian name has he gone by?

A. Harvey Garnett Phipps Tuckett.

Q. This was in September that you saw him?

A. It was.

Q. When before that had you seen him?

A. I cannot say. I should say about the 30th of June, at quarter day. He came to me usually and received his half pay.

Q. You have not seen him in any place except in Fludyer Street?

A. I saw him after his return from India, I believe, at the Minerva Life Insurance Office.

Q. You have not seen him in the Poultry?

A. No, I have not.

Mr. Attorney General. My lords, I now, with your lordships' permission, propose to read the card. Your lordships have been pleased to say that you would consider whether, upon the objection taken by my learned friend, Sir William Follett, it should be received or rejected. Now would be the proper time that it should be read, if your lordships should hold that it is admissible in evidence.

Lord Brougham. Is this your case, Mr. Attorney?

Mr. Attorney General. I should first wish to know whether that card is to be received or rejected?

Sir William Follett. I would suggest that the Attorney General should answer the question of your lordship, because it may make a considerable difference as to our opposing or not the introduction of this card, whether that is the close of his case.

Mr. Attorney General. I apprehend I am now in a situation to ask your lordships for your judgment, whether that card should be received or rejected.

Lord High Steward. You object to its being received, Sir William Follett.

Sir William Follett. Certainly, my lord; and I should wish to address your lordships if any doubt is entertained upon it.

Lord High Steward. Their lordships are ready to hear your objection.

Sir William Follett. Will you let me look at the card.

[*The card was shown to Sir William Follett.*]

Sir William Follett. My lord, I do not think it necessary to object to this card being read.

[*The card was delivered in and read, having engraved upon it* "Captain Harvey Tuckett, 13, Hamilton Place, New Road." *And on the other side written,* "Captain H. Wainwright."]

Sir William Follett. Is that your case, Mr. Attorney General?

Mr. Attorney General. This, my lords, is the case on the part of the prosecution.

Sir William Follett. This being the case on the part of the prosecution, I shall venture to submit to your lordships that no case has been made out which calls upon the prisoner at the bar for an answer; and I think your lordships will see at once that my learned friends have

failed in proving an essential part of their case. Your lordships will observe, that every count of the indictment contains the name of Harvey Garnett Phipps Tuckett. The first count charges that the noble earl, the prisoner at your lordships' bar, did feloniously and unlawfully shoot at Harvey Garnett Phipps Tuckett, with a pistol loaded with gunpowder and a leaden bullet, with intent thereby of his malice aforethought the said Harvey Garnett Phipps Tuckett to kill and murder. In the second count he is charged with feloniously intending to maim and disable the said Harvey Garnett Phipps Tuckett; and in the last count with intending to do the said Harvey Garnett Phipps Tuckett some grievous bodily harm.

Now, my lords, I apprehend that it is not necessary to cite any authority at your lordships' bar to show that the prosecutor is bound to prove the christian and surname of the person against whom the offence is alleged to have been committed, and that if he fails in proving either the christian or the surname he fails in the proof of his case. I think your lordships will see that there is no evidence whatever to prove that the person at whom the noble earl is charged to have shot upon the 12th of September was Mr. Harvey Garnett Phipps Tuckett. The evidence before your lordships would rather lead to the contrary presumption, if presumption could be allowed in such a case; but I apprehend it is not a case of presumption; but that positive evidence must be given by the prosecutor to prove the identity of the person mentioned in the indictment as being the party against whom the offence is alleged to have been committed.

Now, your lordships will observe, that the evidence is this: they have called a person of the name of Codd, who is stated to be an army agent, and who receives the half

pay of a Captain Tuckett, who was formerly an officer in the 11th Dragoons, and who states that the Mr. Tuckett for whom he received the half pay is named Harvey Garnett Phipps Tuckett. Is there any thing at all before your lordships to identify that Mr. Tuckett with the person who is said to have been at Wimbledon Common on the 12th of September? There is nothing whatever. Mr. Codd does not know where that Mr. Tuckett lives; he never saw him at any place but at his own office in Fludyer Street, and once at an insurance office, shortly after his return from India. There is nothing at all to show, therefore, that that gentleman for whom he received the half pay is in any way connected with this transaction. Then, my lords, what is the other evidence on this point? A witness is called who comes from the Poultry, and who states that a Captain Tuckett occupies rooms in his house, where he carries on the business of an Indian and colonial agent, and he states that his name is Harvey Tuckett, but that he does not know his other christian names, and that he does not know where he lives. There is, therefore, no evidence whatever to connect the Captain Tuckett spoken of by Mr. Codd as bearing those christian names with the Captain Tuckett spoken of by the other witnesses. There is not a tittle of evidence, there is not a scintilla of evidence, to connect that Captain Tuckett of whom Mr. Codd speaks with the gentleman who is supposed to have been engaged in this transaction, and, therefore, I submit that my learned friend has entirely failed in one essential part of the proof in this prosecution.

My lords, this point has been expressly decided in the case of the King v. Robinson, in Holt's Reports, page 595, and it is laid down in all the books upon the point, that it is essentially necessary to prove the christian and surname of the party against whom the offence is alleged to have

been committed; and in this case your lordships will observe that that is the point I am taking upon these authorities, that there is no proof of the christian or surname of the gentleman who was upon Wimbledon Common upon that day,—of the christian name, I should rather say, because that a Mr. Tuckett was there may be taken from the other evidence, the evidence of Dann, but there is no evidence to show the christian name of the gentleman who was there upon that day.

Lord High Steward. Strangers must withdraw.

Mr. Attorney General. Your lordships will allow me to say a few words in answer to the objection. My lords, the question is, whether there be any evidence whatever to prove the fact of the christian name of Captain Tuckett, the gentleman wounded. If there be the smallest scintilla of evidence on this point, the prosecution cannot be stopped upon this ground. We are now in a situation as if the trial were before a jury, and at the close of the case for the prosecution an objection should be made that the learned judge should direct the jury to acquit, upon the ground that there is no evidence at all for their consideration. My lords, I say that if this case were before a jury there would be abundant evidence for the consideration of a jury, from which the jury would have no difficulty in inferring that the name of the party wounded in this case was Harvey Garnett Phipps Tuckett.

Now, my lords, how does the case stand? My learned friend withdrew all objection to the reading of the card. Well, then, the gentleman who was wounded, at whom the Earl of Cardigan shot on the 12th of September, was a Captain Tuckett. It was Captain Harvey Tuckett. We have got so far as to one of his names. Now, my lords, how does it stand with regard to the rest? Am I obliged to call the clerk of the parish where he was baptized, in order to prove his baptismal register? Am I obliged to

call his father or his mother, or his godfathers and godmothers, to prove the name that was given to him at the baptismal font? I apprehend that such evidence is wholly unnecessary, and that if from the facts that are proved any reasonable man would draw the inference that we wish to be drawn, there is abundant evidence to be submitted to a jury, and to be submitted to your lordships.

My lords, we have it in evidence, and I suppose my learned friend will not deny, that there is abundant evidence to show that the Captain Tuckett that was wounded lived at No. 13, Hamilton Place, New Road. There the witness Dann goes for him three times; each time he asks for Captain Tuckett, and each time he is introduced to a gentleman answering to the name of Captain Tuckett. Therefore your lordships will have no difficulty in believing that the Captain Tuckett who lives at No. 13, Hamilton Place, New Road, is the Captain Tuckett who fought a duel with the Earl of Cardigan on Wimbledon Common on the 12th of September. Now, my lords, we go by steps. Is there any doubt that it was that Captain Tuckett who took the premises, No. 29, in the Poultry? At the time that he did so, he gave a reference to No. 13, Hamilton Place, New Road. Then, although there is no positive, direct, and demonstrative evidence, your lordships would not doubt that there is sufficient evidence to show that the person who took this place of business in the Poultry under Mr. Walthew was the same Captain Tuckett who lived at No. 13, Hamilton Place, New Road, and who was the antagonist of the Earl of Cardigan on the 12th of September on Wimbledon Common.

Then, my lords, we have only one other stage, and that is to see whether that Captain Tuckett is the Captain Tuckett of whom Mr. Codd speaks. Mr. Codd says that the Captain Tuckett of whom he speaks, and whose name he

proves to be Harvey Garnett Phipps Tuckett, had been in the 11th Hussars, a regiment which had been commanded and still is commanded by the Earl of Cardigan.

Sir William Follett. There is no proof of that whatever.

Mr. Attorney General. There is abundant proof of it.

Sir William Follett. There is no evidence whatever that Lord Cardigan is colonel of the 11th Hussars.

Mr. Attorney General. It was so stated by the policeman at the bar; he said so in the most distinct terms. It will be found in the shorthand writer's note. He said so most distinctly, and he was not cross-examined upon it. Then, my lords, a Captain Tuckett whose name is Harvey Garnett Phipps Tuckett was proved by Mr. Codd to have been in the 11th Hussars, the Earl of Cardigan's regiment. He gave him his card with "11th Hussars" upon it.

Sir William Follett. You really are quite mistaken.

Mr. Attorney General. Then this Captain Tuckett, whose name is Harvey, has one name at least corresponding with that of the Captain Tuckett who fought the duel on Wimbledon Common. Then, will your lordships require positive strict evidence that shall amount to demonstration with respect to the other christian names? If there is evidence from which the inference may fairly be drawn, is not that sufficient for this or any other court of justice? Then, my lords, here is a Captain Tuckett whose name is proved to be Harvey Garnett Phipps Tuckett,—who had been in the 11th Hussars,—who had retired three or four years ago,—who has received his half pay quarterly as the quarter came round,—who came to receive it in Fludyer Street from Mr. Codd, his agent. May it not fairly be inferred by any one of your lordships that this Captain Tuckett who had been in the 11th Hussars, who had retired three or four years, and who had received his

pay quarterly, was the same Captain Tuckett who had a place of business in the Poultry, who had a house at No. 13, Hamilton Place, New Road, and who fought the duel on the 12th of September on Wimbledon Common? Is there not evidence from which that identity may be fairly inferred? Is the prosecution to be stopped upon the ground that there is no evidence whatever to go to the jury, or to go to your lordships, judging of the facts; that there is no particle of evidence to show that this Captain Tuckett whose name is proved to be Harvey Garnett Phipps Tuckett was the same Captain Tuckett who was the antagonist of the Earl of Cardigan?

My lords, I believe there is no human being who, having heard this evidence out of a court of justice, would for one moment hesitate in drawing the inference; and I apprehend that what would be sufficient to convince a reasonable man out of a court of justice ought to convince a person sitting as a judge in a court of justice, if that from which the inference is to be drawn is to be received according to the rules of evidence. Now, my lords, would any person out of a court of justice doubt for one moment, that this Captain Tuckett of whom you have had evidence is the same individual who fought the duel with the Earl of Cardigan upon the 12th of September? Well then, if that inference would necessarily be drawn out of a court of justice, shall it be said that in a court of justice there is not any scintilla of evidence from which such an inference can be drawn? My lords, I do think that this would be a most unsatisfactory conclusion of such a trial; and that your lordships will by no means put a stop to this enquiry upon such an objection. Your lordships will weigh the evidence fairly and deliberately; if you think that it does not amount to proof,—that it does not convince you conscientiously that this is the same individual, of course you will acquit, you will say, "Not

guilty, upon my honour;" but you will not stop the prosecution upon this objection, which I think must be considered as entirely unfounded.

Sir William Follett.—My lords, I will trouble your lordships very shortly indeed in answer to the Attorney General. It may be a very unsatisfactory termination of this prosecution to the parties conducting it. It may be, that after all the care and search they have made, they have failed in proving a very essential part of the case for the prosecution. But I apprehend that this is not a case in which the noble lord at the bar is to appeal to the honour or the consciences of your lordships. The question is here, whether the prosecutor has given any evidence at all to prove an essential part of the case for the prosecution; and I think that in a very few words I can show your lordships that he has given no evidence at all.

My learned friend asked whether the clerk of the parish, or the father or mother of Captain Tuckett, are to be called to prove his christian names. That is not my objection, and the Attorney General knows it perfectly well. It is not that we object that the clerk of the parish or the parents should be called; but what we object is this, that they have called a person of the name of Codd, who has proved that he knows a Captain Tuckett who bears these christian names, but he gave no evidence at all,—no scintilla of evidence (I will take the very words of my learned friend the Attorney General),—no scintilla of evidence, to connect that Captain Tuckett with the gentleman who was upon Wimbledon Common on the 12th of September.

Your lordships will observe that it depends altogether upon the evidence of Mr. Codd, because Mr. Codd is the person who is to speak to the christian name, and he is to show that the person of whom he speaks is the Captain Tuckett to whom the rest of the evidence refers.

Now what is the proof of it? My learned friend says that that Captain Tuckett was formerly in the 11th dragoons? Does any judge who hears me feel prepared to say that he would leave it as a question for a jury, whether the christian names had been proved, upon the mere fact that he had formerly been in a particular regiment, and that another person had been in the same regiment,—of which however there is no evidence whatever? There is no statement made by Mr. Codd but this, that on the 30th of September the Captain Tuckett of whom he speaks was at his house with him; and there is rather an inconsistency as far as that goes, because the fact of his appearing there upon the 30th of September is inconsistent with the evidence that has been given in this case, that he could not attend before the magistrates till the 14th of October in consequence of a wound; and yet the Captain Tuckett of whom Mr. Codd speaks was at his house upon the 30th of September.

My learned friend the Attorney General asked whether any person out of this house would doubt that they were the same person. May I ask whether that is the way in which a prosecution for a criminal offence, or even a proceeding in a civil matter, is to be tried? That your lordships out of this house, after hearing all that has been said about this matter, and all that has been written in the newspapers day after day, may be satisfied that the Captain Tuckett spoken of by the witness is the gentleman who was at Wimbledon Common on the 12th September, is one thing. It is possible that you might draw that inference. But your lordships are now sitting as if you had never heard one word of this matter before. You are now sitting as judges to decide upon the evidence in the case. Your lordships are to dismiss from your minds every thing that you have heard or read in relation to it, and you are then to say whether, because a Captain Tuckett, who

was formerly in the 11th dragoons, bears a certain christian name, he is the same Captain Tuckett who fought a duel upon Wimbledon Common.

My learned friend the Attorney General, I will venture to say, from the mode in which he answered this objection, knew perfectly well that he had failed in proving his case; and that was the meaning of his going step after step in the manner in which he did. He proves that Captain Tuckett lived at 13, Hamilton Place. How does that connect him with the evidence of Mr. Codd? How does my learned friend show that the Captain Tuckett of whom Mr. Codd is speaking is the Captain Tuckett who lived at Hamilton Place, and who had offices at the Poultry? Mr. Codd does not know it; he never saw him at the Poultry; he never saw him at Hamilton Place; he has no reason to know that he lives there. The whole of the evidence is this: that Mr. Codd knows a gentleman of the name of Harvey Garnett Phipps Tuckett, and that that gentleman was formerly in the 11th dragoons, and that he, Mr. Codd, received his half pay; but there is no evidence that that was the person who was upon Wimbledon Common. My lords, I say that my learned friend the Attorney General has distinctly failed, and I say that he knows it. He knows that there is no evidence to connect the person of whom Mr. Codd is speaking with any person connected with this transaction. My learned friend said that he obtains from the card one of the christian names "*Harvey* Tuckett." Is that to be proof that the person named in this indictment "Harvey Garnett Phipps Tuckett" is the same person? I ask whether any one of the judges would leave that question to a jury. There might be two persons of the name of "Harvey Tuckett." Nay, when my learned friend is referring to matters out of this house, we know that in the very regiment commanded by the noble lord at the bar

there were two gentlemen of the same surname, and, I believe, of the same christian name. But the question is this,—not what your lordships know out of this house, nor what your lordships may surmise or conjecture,—but, sitting as judges in a criminal case, looking at the evidence alone, is there any evidence before your lordships to prove that the gentleman who was upon Wimbledon Common bears the christian name and surname of "Harvey Garnett Phipps Tuckett?" My lords, I submit that there is no evidence of it whatever; and however unsatisfactory a termination it may be to the persons conducting this prosecution, that your lordships will feel that they have failed in an essential part of it, and that the prisoner now at your lordships' bar ought not to be called upon for any defence to this case.

Lord High Steward. When this objection was taken, I thought the proper course would be for strangers to withdraw; and I think that is the proper course, when, in a criminal court, an objection is taken that there is no evidence to go to the jury, that the judge should then make up his mind whether there is such evidence or not. The learned counsel, however, did not object to the argument of the Attorney General, and therefore I did not think it right to interpose, in order to prevent his being heard. But I wish to say, with a view to the general administration of criminal justice, that the utmost that is ever required from the counsel for the prosecution who is so challenged is to point out those parts of the evidence upon which he relies to make out the case to be submitted to the jury. I do not recollect any case in which an argument has been entered into upon such an occasion. Generally speaking, I believe the practice has been to prevent any such argument from being heard in that stage of the case. I mention this with a view to the consequences, which may be of some importance in

the practice of criminal courts; and I now move your Lordships that strangers, as I first suggested, be directed to withdraw.

The counsel were directed to withdraw.

Strangers were directed to withdraw; and the Earl of Cardigan retired in the custody of the yeoman usher.

His Grace the Lord High Steward returned to his chair.

A protestation of the Archbishop of Canterbury for himself and the rest of the bishops was delivered, desiring leave to be absent when judgment was given; upon which leave was given.

The objection taken by the counsel for the Earl of Cardigan was considered.

* The LORD HIGH STEWARD spoke to the following effect:

My Lords,

As none of your lordships appear disposed to address the House, it occurs to me that I may possibly be expected, as holding the great office which I have the honour to fill, to state my view of the circumstances in which we are placed, and my opinion of the course which it may be most proper for your lordships to pursue.

The learned counsel who conduct this prosecution having closed their case, and laid before your lordships all the evidence which they mean to offer, the defenders of Lord Cardigan, in conformity to the usual practice of our criminal courts, have objected that that evidence is insufficient to make out the charge, and now require your lordships, instead of calling upon the prisoner for his

* This is introduced, though not in conformity with precedent (having passed while the House was in deliberation with closed doors), by the special direction of the House.

defence, to pronounce his sentence of acquittal immediately.

The charge is, as your lordships are well aware, that the Earl of Cardigan feloniously and maliciously shot with a loaded pistol at a person named in the indictment Harvey Garnett Phipps Tuckett. The defect, upon which the learned counsel rely, is this: that no proof has been adduced that the party at whom the loaded pistol was directed bore that name.

It is proper, in the first place, to observe that the law certainly requires such proof to be given. The law would give no countenance to the opinion that, where the injury itself is, in fact, well established, the name or names borne by the injured party may be considered as immaterial. If he is unknown, a special provision is made for that case; but he ought to be truly described, if he is known, by those who prefer the bill of indictment before the grand jury; they ought to have some evidence of his using or bearing that name. The offence is, indeed, in its own nature the same, whether committed against the person of Thomas or of John; but the fact must be truly stated, and every material allegation must be proved; and if the act is charged as committed against John, and proved to have been committed against Thomas, that variance entitles the prisoner to an acquittal; and if it is not proved to have been committed against John, the case equally falls to the ground. The reasons on which this rule of practice may have been founded your lordships will not expect me to discuss. The existence of the rule, and its constant application, admit of no doubt. There would be little hazard in asserting that no year passes without some example of acquittals taking place in some of the courts by reason of mistakes or defects of this kind. Doubts have sometimes arisen on the sufficiency and propriety of the designations given by bills of indictment to parties

injured; and the fifteen judges, to whom reference has been made on such occasions, invariably acting upon that rule, have decided cases of the utmost importance in accordance with it.

Your lordships therefore have now to examine the evidence adduced, with a view to the sufficiency of the proof of this necessary fact. I shall take the liberty of shortly recapitulating what the witnesses have sworn. For this purpose, my lords, it will be convenient to assume at present that the noble lord now on his trial was seen on Wimbledon Common to fire his loaded pistol at a person who passed by the name of Harvey Tuckett, and wounded him, and that the wounded person who gave his card as Captain Harvey Tuckett, No. 13, Hamilton Place, was afterwards seen living there. What remains then to be proved is that this Harvey Tuckett is the person mentioned in the indictment, that is, that in addition to those two names he bore the names also of Garnett Phipps. On this point, all who prove the facts just enumerated are wholly silent; but other witnesses are brought forward for the express and only purpose of showing to your lordships the existence of a gentleman called Harvey Garnett Phipps Tuckett, and his identity with the person wounded.

Mr. Charles William Walthew deposed that he knows a person called Captain Tuckett, who occupied apartments in the witness's house, in the Poultry, as an office for carrying on some business in the city. When asked what were the names of Captain Tuckett, he said he knew him by no other name than that of Harvey Tuckett; adding, however, that this person lived at No. 13, Hamilton Place, New Road. But he further stated that he had never seen him in Hamilton Place, nor knew of his living there, except from the circumstance of his giving that address when he hired his office in the witness's house, and of the witness having forwarded a hamper to him at that address,

of which he heard no more. Your lordships therefore will observe that by this evidence nothing is brought to your knowledge, but the fact that some person calling himself Harvey Tuckett stated also that he resided at No. 13, Hamilton Place. The witness knows nothing whatever of the party's numerous names, and of his residence he knows nothing, except as before stated. His lodger, by giving the reference, no more proved that he resided there, than the wounded man proved the same fact, by giving his card, which was not pretended to furnish any proof of the residence, except in combination with his being seen there afterwards. But even if the reference, combined with the forwarding of the hamper, had proved that he resided at Hamilton Place, there is no proof that he bore the four names stated in the indictment.

The other witness was Mr. Edward Septimus Codd, an army agent, who is acquainted with a person fully answering the designation in the indictment, Harvey Garnett Phipps Tuckett. He knows him as a captain on half-pay, who formerly belonged to the 11th regiment of Light Dragoons, and the witness has received his half-pay for him quarterly for three or four years. But the place at which he has been in the habit of paying the money to him is the witness's own house in Fludyer Street. He did so on the 30th of September last, during the period for which the magistrate's examination of the wounded man had been suspended on account of the injury inflicted upon him. This witness does not appear even to have heard of *his* Captain Tuckett as residing in Hamilton Place.

Here then is an absolute want of circumstances to connect the individual at whom the pistol was fired, and who afterwards was seen wounded in Hamilton Place, with the half-pay officer known to Mr. Codd as bearing the names set forth in the indictment on which your lordships are sitting in judgment. For the mere fact of the wounded person

bearing some of the names used by the half-pay officer is no proof that the former and the latter are the same: and the representation by that officer of his having held a commission in the same regiment of which Lord Cardigan told the policeman that he himself was colonel, (which, coupled with the actual receipt of half-pay, may sufficiently prove that fact,) cannot, I apprehend, be turned into a presumption that those two individuals would meet in hostile array. Here are two distinct lines of testimony, and they never meet in the same point.

In the course of the argument at the bar in behalf of the prosecution, your lordships were asked what proof of a name could reasonably be expected, and whether justice ought to be defeated for want of the baptismal register of a party described. If I were bound to give an answer to this question, I should say in general terms that whatever fact requires proof in the course of any judicial proceeding ought to be made out by adequate means by the party on whom the burden of proof is cast by the law,—that is, by the prosecutor of an indictment, where the plea of Not Guilty puts in issue all the facts that go to make up the offence charged. But it was not contended at the bar that any proof from the baptismal register was indispensable, or that it would not be enough to produce evidence of the party's bearing, using, or being known by the name attributed to him. It was not urged that Mr. Codd's knowledge that the person of whom he spoke used the four names in the indictment might not rationally convince your lordships that the four names belong to that person; but it was urged, that the person using and owning the four names was not shown to be the same person who, under the name of Captain Harvey Tuckett, had been engaged in the duel fought on Wimbledon Common.

No fact is easier of proof in its own nature, and

numerous witnesses are always at hand to establish it with respect to any person conversant with society. In the present case the simplest means were accessible. If those who conduct the prosecution had obtained your lordships' order for the appearance at your bar of Captain Tuckett, and if the witnesses of the duel had deposed to his being the man who left the field after receiving Lord Cardigan's shot, Mr. Codd might have been asked whether that was the gentleman whom he knew by the four names set forth in the indictment. His answer in the affirmative would have been too conclusive on the point to admit of the present objection being taken.

Several other methods of proof will readily suggest themselves to your lordships' minds. Even if obstacles had been interposed by distance of time and place, by the poverty of those seeking to enforce the law, by the death of witnesses, or other casualties, it cannot be doubted that the accused must have had the benefit of the failure of proof, however occasioned; and here, where none of those causes can account for the deficiency, it seems too much to require that your lordships should volunteer the presumption of a fact, which, if true, might have been made clear and manifest to every man's understanding by the shortest process. Your lordships were informed that no person out of doors could hesitate, on the proof now given, to decide that the identity is well made out. Permit me, my lords, to say that you are to decide for yourselves, upon the proofs brought before you, and that nothing can be conceived more dangerous to the interests of justice, than for a judicial body to indulge in any speculations on what may possibly be said or thought by others who have not heard the same evidence, nor act with the same responsibility, nor (possibly) confine their attention to the evidence actually adduced.

If, my lords, the present were an ordinary case, tried before one of the inferior courts, and the same objection had been taken in this stage to the proof of identity, the judge would consult his notes, and explain how far he thought the objection well founded, and I apprehend that the jury would at once return a verdict of acquittal.

Your lordships, sitting in this High Court of Parliament, unite the functions of both. I have stated my own views as an individual member of the court, of the question by you to be considered, discussed, and decided. Though I have commenced the debate, it cannot be necessary for me to disclaim the purpose of dictating my own opinion, which is respectfully laid before you, with the hope of eliciting those of the House at large. If any other duty is cast upon me, or if there is any more convenient course to be pursued, I shall be greatly indebted to any of your lordships who will be so kind as to instruct me in it. In the absence of any other suggestion I venture to declare my own judgment, grounded on the reasons briefly submitted, that the Earl of Cardigan is entitled to be declared Not Guilty.

After deliberation, it was moved that the House do now proceed to give their opinion, whether the said Earl is guilty or not guilty of the charge in the indictment; which, being put, passed in the affirmative.

Strangers were again admitted.

Then, after proclamation made for silence, the Lord High Steward, standing up, by a list called every peer by his name, beginning with the junior baron, and asked him, "John Lord Keane, how says your lordship; is "James Thomas Earl of Cardigan guilty of the felony "whereof he stands indicted, or not guilty."

Whereupon John Lord Keane, standing up in his place uncovered, and laying his right hand upon his breast, answered, "Not guilty, upon my honour."

In like manner, the several lords after mentioned, being all that were present, answered as follows:

Thomas Lord Monteagle of Brandon—Not guilty, upon my honour.

Arthur Lord De Freyne—Not guilty, upon my honour.

Nicholas William Lord Colborne—Not guilty, upon my honour.

Chandos Lord Leigh of Stoneleigh—Not guilty, upon my honour.

Charles Lord Sudeley—Not guilty, upon my honour.

William Lord Bateman—Not guilty, upon my honour.

Charles Lord Glenelg—Not guilty, upon my honour.

Alexander Lord Ashburton—Not guilty, upon my honour.

Philip Charles Lord de L'Isle and Dudley—Not guilty, upon my honour.

James Lord Abinger—Not guilty, upon my honour.

William Lord Fitzgerald—Not guilty, upon my honour.

John William Lord Duncannon—Not guilty, upon my honour.

Francis Godolphin Lord Godolphin—Not guilty, upon my honour.

William Lewis Lord Dinorben—Not guilty, upon my honour.

Thomas Lord Kenlis—Not guilty, upon my honour.

George William Fox Lord Rossie—Not guilty, upon my honour.

Henry Lord Brougham and Vaux—Not guilty, upon my honour.

William Draper Lord Wynford—Not guilty, upon my honour.

Charles Lord Stuart de Rothesay—Not guilty, upon my honour.

Henry Lord Cowley—Not guilty, upon my honour.

Thomas Lord Melros—Not guilty, upon my honour.

John Henry Lord Tenterden — Not guilty, upon my honour.

John Singleton Lord Lyndhurst—Not guilty, upon my honour.

James Archibald Lord Wharncliffe — Not guilty, upon my honour.

John James Lord Rayleigh — Not guilty, upon my honour.

John George Weld Lord Forester—Not guilty, upon my honour.

John Lord Ormonde—Not guilty, upon my honour.

John William Robert Lord Ker—Not guilty, upon my honour.

Charles Lord Colchester—Not guilty, upon my honour.

William Lord Melbourne—Not guilty, upon my honour.

James Andrew Lord Dalhousie—Not guilty, upon my honour.

Alan Legge Lord Gardner — Not guilty, upon my honour.

George Augustus Frederick Charles Lord Sheffield—Not guilty, upon my honour.

George James Lord Arden—Not guilty, upon my honour.

John Thomas Lord Redesdale — Not guilty, upon my honour.

Thomas Atherton Lord Lilford—Not guilty, upon my honour.

John Lord Northwick—Not guilty, upon my honour.

Robert John Lord Carrington — Not guilty, upon my honour.

George Lord Calthorpe—Not guilty, upon my honour.

Randolph Lord Stewart of Garlies—Not guilty, upon my honour.

Edward Thomas Lord Thurlow—Not guilty, upon my honour.

Henry Hall Lord Gage—Not guilty, upon my honour.

Richard Lord Braybrooke — Not guilty, upon my honour.

George Lord Kenyon—Not guilty, upon my honour.

Fletcher Lord Grantley—Not guilty, upon my honour.

Charles Lord Southampton — Not guilty, upon my honour.

Thomas Lord Walsingham — Not guilty, upon my honour.

Henry Edward Lord Holland—Not guilty, upon my honour.

George Lord Boston—Not guilty, upon my honour.

Henry Lord Montfort—Not guilty, upon my honour.

John Lord Colville of Culross — Not guilty, upon my honour.

Alexander George Lord Saltoun—Not guilty, upon my honour.

Hugh Charles Lord Clifford of Chudleigh—Not guilty, upon my honour.

William Lord Ward—Not guilty, upon my honour.

Thomas Miles Lord Beaumont—Not guilty, upon my honour.

Thomas Lord Camoys—Not guilty, upon my honour.

Peter Robert Lord Willoughby de Eresby—Not guilty, upon my honour.

George Edward Lord Audley—Not guilty, upon my honour.

William George Lord Kilmarnock—Not guilty, upon my honour.

Charles Viscount Canterbury — Not guilty, upon my honour.

William Carr Viscount Beresford—Not guilty, upon my honour.

George Viscount Gordon—Not guilty, upon my honour.

Cornwallis Viscount Hawarden — Not guilty, upon my honour.

Samuel Viscount Hood—Not guilty, upon my honour.

John Robert Viscount Sydney—Not guilty, upon my honour.

Henry Viscount Hereford—Not guilty, upon my honour.

Henry George Francis Earl of Ducie—Not guilty, upon my honour.

Thomas William Earl of Lichfield—Not guilty, upon my honour.

William Pitt Earl Amherst — Not guilty, upon my honour

John Sommers Earl Sommers — Not guilty, upon my honour.

John Earl of Eldon—Not guilty, upon my honour.

Thomas Philip Earl de Grey—Not guilty, upon my honour.

John Reginald Earl Beauchamp—Not guilty, upon my honour.

George Augustus Frederick Henry Earl of Bradford—Not guilty, upon my honour.

Edmund Earl of Morley—Not guilty, upon my honour.

James Walter Earl of Verulam—Not guilty, upon my honour.

Gilbert Earl of Minto—Not guilty, upon my honour.

Thomas Earl of Wilton—Not guilty, upon my honour.

James Alexander Earl of Rosslyn—Not guilty, upon my honour.

James Earl of Bandon—Not guilty, upon my honour.

George Charles Earl of Lucan—Not guilty, upon my honour.

William Earl of Wicklow — Not guilty, upon my honour.

Stephen Earl of Mount Cashell — Not guilty, upon my honour.

George Earl Cadogan—Not guilty, upon my honour.

Henry John George Earl of Carnarvon—Not guilty upon my honour.

George Earl of Beverley—Not guilty, upon my honour.

Ernest Augustus Earl of Mount Edgcumbe — Not guilty, upon my honour.

Arthur Blundell Sandys Trumbull Earl of Hillsborough— Not guilty, upon my honour.

Henry George Earl Bathurst — Not guilty, upon my honour.

William Earl of Radnor —Not guilty, upon my honour.

George John Earl De Lawarr — Not guilty, upon my honour.

Charles Philip Earl of Hardwicke — Not guilty, upon my honour.

Henry Richard Earl Brooke and Earl of Warwick—Not guilty, upon my honour.

Heneage Earl of Aylesford — Not guilty, upon my honour.

Charles Augustus Earl of Tankerville — Not guilty, upon my honour.

Edward Earl of Oxford and Earl Mortimer—Not guilty, upon my honour.

Montagu Earl of Abingdon — Not guilty, upon my honour.

Cropley Earl of Shaftesbury — Not guilty, upon my honour.

Arthur Algernon Earl of Essex — Not guilty, upon my honour.

John William Earl of Sandwich — Not guilty, upon my honour.

George Earl of Chesterfield — Not guilty, upon my honour.

William Basil Percy Earl of Denbigh—Not guilty, upon my honour.

William Earl of Devon—Not guilty, upon my honour.

Constantine Henry Marquis of Normanby — Not guilty, upon my honour.

George HoratioMarquis of Cholmondeley — Not guilty, upon my honour.

Henry William Marquis of Anglesey.—Not guilty, upon my honour.

Spencer Joshua Alwyne Marquis of Northampton.—Not guilty, upon my honour.

Brownlow Marquis of Exeter — Not guilty, upon my honour.

John Marquis of Bute—Not guilty, upon my honour.

James Marquis of Abercorn — Not guilty, upon my honour.

James Brownlow William Marquis of Salisbury — Not guilty, upon my honour.

William Harry Duke of Cleveland — Not guilty legally, upon my honour.

Richard Plantagenet Duke of Buckingham and Chandos.— Not guilty, upon my honour.

George Duke of Marlborough — Not guilty, upon my honour.

Henry Duke of Beaufort—Not guilty, upon my honour.

Edward Adolphus Duke of Somerset — Not guilty, upon my honour.

George William Frederick Earl of Clarendon, Lord Privy Seal—Not guilty, upon my honour.

Henry Marquis of Lansdowne, Lord President of the Council—Not guilty, upon my honour.

His Royal Highness Adolphus Frederick Duke of Cambridge—Not guilty, upon my honour.

Then the Lord High Steward, standing up uncovered at the chair as he did when he put the question to the other lords, declared his opinion to the same effect, and in the same manner.

Then the Lord High Steward declared that the Earl of Cardigan is acquitted of the felony whereof he stands indicted, all the lords present having unanimously voted him "Not Guilty."

Proclamation was made for bringing the prisoner to the bar.

The Earl of Cardigan was brought to the bar by the Yeoman Usher.

Lord High Steward.—James Thomas Earl of Cardigan, you have been indicted for a felony, for which you have been tried by your peers, and I have the satisfaction of declaring to you that their lordships have pronounced you not guilty by an unanimous sentence. The number of their lordships present I have not precisely at this moment before me, or I should have been glad to have stated it to your lordship; but their lordships have unanimously said "Not Guilty."

His lordship retired.

Proclamation was made for dissolving the commission, and the white staff being delivered to the Lord High Steward by the Gentleman Usher of the Black Rod, his Grace stood up uncovered, and holding the staff in both his hands, broke it in two, and declared the commission to be dissolved.

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